

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

-----X
UNITED STATES, et al., : Civil Action No.:
: 1:23-cv-108
Plaintiffs, :
versus : Wednesday, September 25, 2024
: Alexandria, Virginia
GOOGLE LLC, : Day 13 p.m.
: Pages 1-188
Defendant. :
-----X

The above-entitled bench trial was heard before the
Honorable Leonie M. Brinkema, United States District Judge.
This proceeding commenced at 1:00 p.m.

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1	TABLE OF CONTENTS
2	WITNESSES
3	On behalf of the Defendant:
4	COURTNEY CALDWELL
5	Direct examination by Ms. Phillips 4
6	Cross-examination by Ms. Garcia ...15
7	ADAM STEWART
8	Direct examination by Ms. Sessions 25
9	Direct examination by Ms. Sessions 25
10	Cross-examination by Mr. Teslicko .74
11	Redirect examination by Ms. Session95
12	ALEJANDRO BORGIA
13	Direct examination by Ms. Morgan ..101
14	Cross-examination by Mr. Freeman ..131
15	Redirect examination by Ms. Morgan 149
16	KENNETH BLOM (video)156
17	KENNETH HOCHBERGER (read-in).....160
18	
19	MISCELLANY
20	Proceedings September 24, 2024
21	Certificate of Court Reporter
22	
23	
24	
25	

Direct - C. Caldwell

P R O C E E D I N G S

THE COURT: You may proceed.

DIRECT EXAMINATION (Resumed)

BY MS. PHILLIPS:

Q Good afternoon, Ms. Caldwell.

Ms. Caldwell, do you engage in digital advertising for ShearShare?

A Yes, we do.

Q Do you use Google's tools, ad tech tools, to engage in digital advertising for ShearShare?

A Yes, we do.

Q Which tools do you use?

A We use Google AdWords, various different types of campaigns from display to video to image.

Q And how did you first learn about Google AdWords or Google Ads?

A Oh, gosh. I think my first job back in 2001 after I had my son. That job allowed me to start using Google AdWords. So I think I've been using it since the very beginning.

Q And when did you begin digital advertising for ShearShare?

A At a company called eVerge Group. They are a software company.

Q I'm sorry. When did you start using Google Ads in

Direct - C. Caldwell

1 connection with your work --

2 A Oh, I'm sorry. With ShearShare in 2017 as soon as we
3 launched the mobile app.

4 Q Okay. And in 2017, when you began using Google Ads for
5 ShearShare, did you set up your own account?

6 A I did.

7 Q Okay. And how did you find that experience?

8 A Super easy. The user interface is very simplistic.
9 It's very flexible. I didn't have an issue setting it up on
10 my own.

11 Q And at the time, did you create your own creative ads
12 and your copy, the words that went with your ads?

13 A We did, yes.

14 Q I'd like to show you a demonstrative that we have
15 already seen in court.

16 MS. PHILLIPS: If we could, pull up, Mr. Spalding,
17 Stefaniu DX 1.3.

18 BY MS. PHILLIPS:

19 Q And these are the different campaign types that are
20 available in the Google Ads interface.

21 Which campaign types have you used in connection with
22 digital advertising for ShearShare?

23 A We use search, performance max, display, video, and
24 app.

25 Q And why do you use those different campaign types?

Direct - C. Caldwell

1 A They allow us to reach the broadest audience as
2 possible.

3 Q And when you run specifically a display campaign, do
4 you run image ads?

5 A We do.

6 Q And when you run a display campaign, do you run native
7 ads?

8 A We do.

9 Q And when you run a display campaign, do you run
10 in-stream video ads?

11 A Absolutely.

12 MS. PHILLIPS: If we could look next, Matt, at the
13 same demonstrative but page 1.6, please.

14 BY MS. PHILLIPS:

15 Q When you're on Google Ads setting up a campaign,
16 Ms. Caldwell, do you select which kinds of devices to target
17 for your customers?

18 A We do.

19 Q And of these options, computers, mobile phones, and
20 tablets, which devices do you choose to target?

21 A All three.

22 Q Okay. Have you ever chose to target users only using
23 computers?

24 A No.

25 Q And why not?

Direct - C. Caldwell

1 A Our users don't hang out on computers all the time.

2 MS. PHILLIPS: Okay. You can take that down.

3 Thank you, Matt.

4 BY MS. PHILLIPS:

5 Q Ms. Caldwell, does ShearShare use any non-Google ad
6 tech tools?

7 A We do.

8 Q Which ones?

9 A Instagram, we've tried Facebook, we've tried LinkedIn
10 ads, and I'm now dipping my toe into TikTok.

11 Q Okay. Let's talk about Facebook.

12 When did you start using Facebook's ad tech tools in
13 connection with ShearShare?

14 A It was back in 2017. We were going through a startup
15 accelerator called 500 Global, and our mentor at the time,
16 which is all about growth, was helping us decide where to
17 spend our limited funds. And so we tried Facebook to start.

18 Q And how did that work out?

19 A Epic fail.

20 Q Okay.

21 A Sorry.

22 Q How did you -- why do you say it was an epic fail?

23 A Every other startup that was going through this program
24 seemed to have immense success with Facebook ads, and so we
25 tried to run a couple of look-alike campaigns. It did not

Direct - C. Caldwell

1 work for us. We know that stylists and salon owners may
2 have profiles on Facebook, but they do not use Facebook for
3 business purposes. And so I feel like I spent a lot more
4 money and time than I needed to on Facebook before I decided
5 to cut the cord.

6 Q How long was it until you cut the cord?

7 A Oh, about eight to nine months.

8 Q And then what did you do with the advertising budget
9 that you had been spending on Facebook?

10 A We just shifted it to various other platforms, and we
11 tried Google AdWords.

12 Q Okay. And you mentioned that you also use Instagram ad
13 tech tools in connection with ShearShare.

14 A We do.

15 Q Have you had success doing that?

16 A We have, yes.

17 Q Okay. And do you monitor the -- do you monitor the
18 performance of your advertising campaigns both on Google Ads
19 and on Instagram?

20 A Yes, like a hawk.

21 Q Okay. How frequently do you monitor that information?

22 A I'm looking at that information on a biweekly basis.
23 We are reporting that back to our board of directors on a
24 quarterly basis. We have team meetings with my leadership
25 team on a monthly basis.

Direct - C. Caldwell

1 Q And why do you monitor that performance?

2 A Well, as a startup, unfortunately, you have a lack of a
3 lot of things, usually a lack of money, a lack of resources,
4 a lack of people, a lack of time and sleep. And so when I
5 think about the limited marketing budget that we have, we
6 have to make sure that every dollar that our board is
7 approving for us to spend on a marketing campaign comes back
8 to the business in full.

9 Q And if you don't see performance somewhere, what do you
10 do with your money?

11 A We shift.

12 Q Okay. You mentioned TikTok. Why are you interested in
13 beginning to advertise on TikTok?

14 A That's where stylists are. If my core audience, my
15 target audience was not on a certain digital platform, I
16 would not advertise there. And as much as I don't know
17 about TikTok, I know that I have to learn TikTok and show up
18 there because that's where the eyeballs are.

19 Q How much of your 2022 digital advertising budget was
20 allocated between Instagram and Google Ads?

21 A In 2022, it would have been 70 percent Google,
22 30 percent Instagram.

23 Q Okay. How about at the start of 2023? What was that
24 allocation?

25 A About 65/35, 65 Google.

Direct - C. Caldwell

1 Q And to what extent was the decision to make that shift
2 between 2022 and 2023 due to performance of your advertising
3 on Google Ads and Instagram?

4 A Yeah. So, again, our board approves our marketing
5 spend a year in advance. And so as we are reporting back to
6 the board on a quarterly basis how our marketing campaigns
7 are vetting, if there's something where we have higher
8 engagement in certain areas or there's a campaign that's
9 trending upwards for digital demand for our mobile app
10 downloads, then we'll reallocate spend and shift our numbers
11 accordingly.

12 Q Okay. What do you like about using Google Ads and
13 Google ad tech tools?

14 A It's super simple. I mean, we have a very small team.
15 We have five full-time team members, one part-time team
16 member, and a couple of contractors. And so because of
17 that, anything that we decide to put our time and effort and
18 energy towards, it has to be very simple and cover a lot of
19 bases.

20 I feel like when I use the Google AdWords platform, I
21 am really getting about four people in one. I get someone
22 who can help write the ads, I get campaign execution, I get
23 the tracking capability, and I get the analytics.

24 Q So speaking about the analytics, how, if at all, do you
25 use the sort of reporting and data that Google Ads gives you

Direct - C. Caldwell

1 after you run a campaign?

2 A Uh-huh. We take a look at how many website visitors
3 we've seen, we take a look at how many app downloads, did
4 those people convert to a new ShearShare host, which is a
5 salon owner on our platform, did that convert to a new
6 ShearShare stylist who actually made a booking. We look
7 very closely at the numbers to tell us where we're going to
8 spend the next month.

9 Q And to what extent do you use that data to determine
10 how, as a business, you will expand?

11 A Yeah. So it's important for us that we not just say,
12 oh, we're going to go open up ShearShare locations in Paris,
13 Texas, of all places. And the information we're able to get
14 from Google tells me, oh, there are 1,000 stylists that have
15 joined the platform in New York City, and there are also 50
16 salon owners who have added their inventory to that city.
17 So then we know that's where we need to spend our time and
18 our monies.

19 Q Okay. To what extent have you used any customer
20 service available to you through the Google Ads platform?

21 A I don't spend a lot of time with Google customer
22 service. I probably reach out maybe three times a year, but
23 that's because the knowledge bases and the self-help is very
24 intuitive.

25 Q And I think you mentioned earlier you get some

Direct - C. Caldwell

1 assistance from Google customer support as it relates to
2 your advertising copy.

3 A That's correct.

4 Q Can you explain that?

5 A Yes, that's correct.

6 Yes. We've had a couple of cold email -- just a
7 Googler reaching out to us saying, hey, how can we be
8 helpful as it relates to your Google --

9 (Reporter clarification.)

10 THE WITNESS: Sure.

11 We've had Googlers reach out to us and ask how
12 they can be helpful in helping us to optimize our campaigns.
13 So I've been able to meet one-on-one with Google employees
14 to be able to re-craft the copy that we used in our Google
15 Ads.

16 BY MS. PHILLIPS:

17 Q And were you able to use that advice that you got from
18 the Google customer support folks in your ads on other
19 platforms as well?

20 A Oh, yes. Yes. So we use that -- the same AdWords copy
21 across Instagram and any other marketing vehicle that we
22 leverage.

23 Q Do you know if you were charged for that particular
24 advice with regard to --

25 A Oh, it was free. No.

Direct - C. Caldwell

1 Q Okay. Have you ever received any grants to support
2 ShearShare?

3 A We have, yes.

4 Q Have you ever received any grants from Google?

5 A Yes, we have.

6 Q What was that grant?

7 A We were a part of the first cohort during COVID for the
8 Google Black Founders Fund.

9 Q What is the Google Black Founders Fund, if you know?

10 A Yes. It's -- after George Floyd and during COVID, to
11 help businesses that were founded by usually black female
12 founders, black male founders, to help them keep their
13 businesses open.

14 I know for us -- obviously, as everyone can probably
15 assume, in the beauty industry during COVID, it's hard to do
16 someone's facial being 6 feet away or do someone's hair
17 having to have that time apart. And so our revenues went to
18 zero, and thankfully, you know, we were able to receive this
19 grant from Google that helped me to continue to pay our team
20 and keep the business open.

21 Q Did you have to apply for that grant?

22 A We did.

23 Q Okay. Do you know whether you're eligible for another
24 grant?

25 A It's one time, yeah.

Direct - C. Caldwell

1 Q And how were you able to use that grant money during
2 COVID?

3 A Yeah. We have the best team, and they stayed on. You
4 know, again, our revenues for the company went to zero, and
5 so our team was not able to be paid for about three months
6 as we were trying to navigate through all the PPP funds.
7 And so the team was able to be made whole in their salaries,
8 and we were able to keep our servers that we have supporting
9 the app up and running.

10 Q Okay. Just a couple of other questions for you,
11 Ms. Caldwell.

12 Have you been contacted by the plaintiffs in this case?

13 A Yes.

14 Q Okay. Have you spoken to them?

15 A I have.

16 Q Okay. How many times?

17 A Once.

18 Q Okay. And what did they say to you when you spoke with
19 them?

20 A We talked a little bit about DSPs, about me
21 understanding the nuances of the case. They asked if I had
22 read the case, and they asked me if understood what perjury
23 is.

24 Q Okay. What did you say to that?

25 A That I do understand what it means to perjure oneself.

Cross-Examination - C. Caldwell

1 MS. PHILLIPS: I don't have anything further.

2 THE COURT: All right. Any cross?

3 MS. GARCIA: Yes. And, Your Honor, we do have one
4 small binder.

5 THE WITNESS: All right.

6 MS. GARCIA: May I proceed?

7 THE COURT: Yes.

8 CROSS-EXAMINATION

9 BY MS. GARCIA:

10 Q Good afternoon, Ms. Caldwell.

11 A Good afternoon.

12 Q We've met. I'm Kelly Garcia.

13 A Nice to meet you in person.

14 Q Nice to meet you in person.

15 Earlier you testified that the ShearShare app launched
16 in 2017; is that right?

17 A Yes, correct.

18 Q And ShearShare is backed by a few venture capital
19 investors; correct?

20 A Yes. We have an amazing group of investors.

21 Q You've generated significant funding over the years,
22 right?

23 A I wouldn't say significant. As black female founders,
24 I am the most founded but the least funded.

25 Q You wouldn't say significant. Isn't it true that you

Cross-Examination - C. Caldwell

1 generated millions of dollars in funding in the past few
2 years?

3 A Yes. I'm actually part of the -- what I consider the
4 saddest and the best list, which is how many black female
5 founders --

6 (Reporter clarification.)

7 THE WITNESS: Oh, so sorry. So sorry.

8 I am a part of what I consider to be the saddest
9 and one of the best list, which is how many black female
10 founders have been able to raise over a million dollars in
11 venture capital.

12 BY MS. GARCIA:

13 Q And you mentioned receiving grant money from Google; is
14 that right?

15 A Correct.

16 Q And how much money has ShearShare received from Google
17 in the past five or so years?

18 A \$100,000 in the grant funding.

19 Q And that's a significant sum for a small business like
20 ShearShare, right?

21 A I mean, we support 66,000 other small businesses. So I
22 wouldn't say that was significant.

23 Q Do you consider yourself a small business?

24 A Absolutely.

25 Q On direct you testified about using Google's products,

Cross-Examination - C. Caldwell

1 Google Ads, to advertise ShearShare, right?

2 A Correct.

3 Q And you testified that you also advertise on Instagram;
4 is that right?

5 A Yes.

6 Q All right. Well, I'd like to talk to you about display
7 ads, and I think you mentioned them on direct.

8 Is it fair to say you're familiar with the term?

9 A We are.

10 THE COURT: Counsel, you should slow down, too.

11 MS. GARCIA: Apologies, Your Honor.

12 THE COURT: All right.

13 BY MS. GARCIA:

14 Q You've used the term display ad or banner ad to
15 describe your advertisements; is that right?

16 A Yes, that's correct.

17 Q Could you please explain for the record: How do you go
18 about placing a display ad on Instagram?

19 A So I'm usually on my phone. There will be a post that
20 we make generally to our Instagram page, which is
21 @ShearShare, and then there's a button at the bottom that
22 says boost post. So you go through a series of questions
23 where Instagram is asking who would you like to see this ad,
24 for how much money, how long would you like for us to run
25 this ad for you, and then you hit submit. And the little

Cross-Examination - C. Caldwell

1 pop-up says we are now -- we have now received your ad
2 request. We will then approve it. And once it is approved,
3 it will now be live.

4 Q And is that the same Instagram app that someone like me
5 might use to post pictures of their children?

6 A Yes.

7 Q Okay. And do you have to register as business owner?

8 A No, I don't have to.

9 Q Okay. You use your personal Instagram to post?

10 A Oh, no. I use my personal Instagram for personal. I
11 use ShearShare for the brand.

12 Q Got it.

13 So just to be clear, you're a Google Ads customer, but
14 you wouldn't use Google Ads to place an advertisement on
15 Instagram; is that right?

16 A No. Correct.

17 Q You use a different tool to places those ads? The
18 Instagram app?

19 A Correct.

20 Q And, similarly, you wouldn't use Google Ads to place an
21 advertisement on Facebook, right?

22 A Correct.

23 Q On direct you were asked about your use of the Google
24 Ads platform, and I think they brought it up on the screen.
25 Do you recall that?

Cross-Examination - C. Caldwell

1 A I do.

2 Q And you mentioned that you're able to select which type
3 of ads you want to place, for example, search ads, display
4 ads, video ads; is that right?

5 A Correct.

6 Q And so now focusing, again, on display ads, could you
7 give me an example of a website where we might see a display
8 ad for ShearShare?

9 A I wouldn't know where those websites -- like, the exact
10 websites. It could be 123.com. It could be xyz.com. I
11 trust Google and its network to put my ad in front of the
12 right target audience.

13 Q Might an advertisement for ShearShare appear on
14 weather.com?

15 A I'm not sure.

16 Q Okay. Maybe a beauty website?

17 A Definitely a beauty website.

18 Q Okay. So let's use beauty.com as an example.

19 A Okay.

20 Q You wouldn't use the Instagram app to place a display
21 ad on beauty.com, right?

22 A Correct.

23 Q Have you ever used the Instagram app to place a display
24 ad on beauty.com?

25 A No, I have not.

Cross-Examination - C. Caldwell

1 Q You agree with me that the audience for display ads or
2 banner ads on websites skews older than the audience for
3 Instagram, right?

4 A I can't say that. Because as we serve as mentors and
5 sit on the boards of beauty schools and barber colleges,
6 we've noticed that the age of the students coming in skews
7 older now.

8 Q All right. So the age of the students skews older? Is
9 that what you said?

10 A Correct.

11 Q Got it.

12 And what about TikTok? What's the general demographic
13 you're looking to --

14 A Definitely younger.

15 Q You said definitely younger?

16 A Younger.

17 Q And, Ms. Caldwell, you don't have any display ads on
18 your own website, shearshare.com, right?

19 A Correct.

20 Q Okay. And there aren't any display ads in the
21 subsections of your website, like the Newsroom for example?

22 A No. We used to have some ads on our blog post, and
23 then we realized that people were only coming to the website
24 as an informational piece and not to download the app. So
25 we wanted to make sure that we limited the number of stops

Cross-Examination - C. Caldwell

1 that someone had to make in order to download the app.

2 MS. GARCIA: All right. So if we could, just pull
3 up what's been marked Plaintiffs' Demonstrative X.

4 BY MS. GARCIA:

5 Q And that's going to be in your binder, but it's
6 probably easier to look up at the screen.

7 A Oh, yes.

8 Q All right. Do you see that?

9 A Yes.

10 Q And do you recognize that?

11 A Yes, this is our website.

12 Q That's your website?

13 A Uh-huh.

14 Q And I think, you know, if we scroll down a little bit,
15 you can see there's no display ads here.

16 You agree with me there, right?

17 A Correct.

18 Q And going back to the first slide or the first page of
19 this, the top of the virtual screen before you, you can see
20 that ShearShare features a link to a Google for startups
21 webpage. Do you see that?

22 A Yes, in the right.

23 Q Okay. And if you were to click on that, that would
24 bring you to the next page, which --

25 MS. GARCIA: If we can, just go there.

Cross-Examination - C. Caldwell

1 BY MS. GARCIA:

2 Q Which is -- well, I'll let you take a look and let me
3 know.

4 Do you recognize this?

5 A Yes, I do.

6 Q And what is this?

7 A This was a feature about ShearShare on the Google
8 website.

9 Q Okay. And if you were to scroll down on that website
10 just a bit, you'd see that you're listed as using different
11 Google products. Do you see that?

12 A I do.

13 Q And one of those products is Firebase?

14 A Correct.

15 Q And that is a tool to build mobile apps?

16 A Yes.

17 Q Another product is Google analytics?

18 A Uh-huh.

19 Q Is that what you were speaking about on direct?

20 A Yes.

21 Q And you're aware that ShearShare is also described
22 using -- or described as using Google words in this article,
23 right?

24 A Google AdWords, yes.

25 Q Or AdWords. Thank you for that correction.

Cross-Examination - C. Caldwell

1 And that's the product that you were speaking about
2 with respect to Google Ads; is that right?

3 A Yes, correct.

4 Q You don't use Google's DV360; do you?

5 A Say that again.

6 Q You don't use Google's DV360?

7 A No. I do not know what that is.

8 Q Have you ever used a demand-side platform?

9 A I've used AdRoll in a past life, but not for
10 ShearShare.

11 Q AdRoll is a demand-side platform?

12 A I believe it is, yes.

13 Q Okay. And before becoming involved in this case, had
14 you heard the term "demand-side platform" or DSP?

15 A Yes.

16 Q You had?

17 A Yes, in our conversation.

18 Q So before September -- before this month, have you
19 heard the term "demand-side platform"?

20 A No. AdRoll was not -- they did not talk about
21 themselves or describe themselves as a DSP. It was just an
22 AdWords -- or an ad platform.

23 Q And now, it's your understanding, since our
24 conversation, as you mentioned, that -- sorry -- AdRoll is a
25 demand-side platform?

Cross-Examination - C. Caldwell

1 A Is a DSP, yes, correct.

2 Q Okay. You don't use Google's publisher ad server, DFP,
3 right?

4 A No.

5 Q Had you heard the term "publisher ad server" before?

6 A Yes, but I don't use that.

7 Q When was the first time you heard the term "publisher
8 ad server"?

9 A Oh, goodness. I've been using Google products for 20
10 years. So I don't have an exact date for you.

11 Q Okay. What is the name of Google's publisher ad
12 server?

13 A I don't know the exact name.

14 Q What about AdX? Had you heard of AdX before becoming
15 involved in this case?

16 A No.

17 Q Have you read the complaint?

18 A Yes, after our conversation.

19 Q Do you know whether Google Ads bids on third-party
20 exchanges on your behalf?

21 A I do not know. I go to Google to make sure that I --
22 when I'm placing an ad, that it's getting in front of the
23 right audience where my target audience usually hangs out.

24 Q Okay. And if Google could increase your ROI by bidding
25 on third-party exchanges, would you support that strategy?

Direct Examination - A. Stewart

1 A If Google could -- ask that --

2 Q Increase your ROI by bidding on third-party exchanges,
3 would you support that strategy?

4 A Yes.

5 MS. GARCIA: Thank you. No further questions.

6 THE COURT: Any redirect?

7 MS. PHILLIPS: No, Your Honor. Thank you.

8 THE COURT: All right. Ms. Caldwell, thank you
9 for your testimony. You are free to stay and watch the
10 proceedings or leave, but do not discuss your testimony with
11 any witness who has not yet testified.

12 Thank you.

13 THE WITNESS: Thank you, Your Honor.

14 THE COURT: Your next witness, Ms. Dunn.

15 MS. DUNN: Yes, Your Honor. Google calls Adam
16 Stewart.

17 THE COURT: All right. Go ahead.

18 MS. SESSIONS: May I proceed, Your Honor?

19 THE COURT: Yes.

20 MS. SESSIONS: Thank you. Justina Sessions for
21 Google.

22 ADAM STEWART, DEFENDANT'S WITNESS, SWORN

23 DIRECT EXAMINATION

24 BY MS. SESSIONS:

25 Q Good afternoon, Mr. Stewart. Could you please

Direct examination - A. Stewart

1 introduce yourself to the Court and spell your name for the
2 court reporter.

3 A Yes. My name is Adam Stewart. A-D-A-M.
4 S-T-E-W-A-R-T.

5 Q And, Mr. Stewart, you're a little soft-spoken. So that
6 is the microphone in front of you, so please try to lean
7 over if you can -- or even better. So you can hold that up.

8 A Okay. Is that better?

9 Q And sometimes it's just easiest to kind of do it
10 podcast style.

11 A Okay.

12 Q And who is your current employer?

13 A I work for Google.

14 Q Okay. How long have you worked at Google?

15 A For almost 18 years.

16 Q And what do you do at Google?

17 A I'm the vice president of consumer goods, government,
18 and entertainment and large customer sales for Google.

19 Q And at a high level, what does that job entail?

20 A I oversee our media sales business across multiple
21 industries.

22 Q And what are media sales?

23 A Advertising sales.

24 Q So in your job, do you talk with companies that are
25 seeking to market themselves?

Direct examination - A. Stewart

1 A I do.

2 Q How often?

3 A Daily, weekly, yes.

4 Q Do you also supervise other Google employees who talk
5 with companies seeking to market themselves?

6 A I do. I oversee a team of about 500 people.

7 Q Okay. Could you tell the Court briefly about your
8 career before Google.

9 A I've been in advertising for 33 years. I was one of
10 the first employees at the Discovery Channel -- the first
11 300 employees at the Discovery Channel. I worked there for
12 almost 14 years. I've worked briefly for a couple of other
13 companies. I've worked for Univision. I've worked for
14 Screenvision and now 18 years at Google.

15 Q So have all of your jobs involved advertising?

16 A They have.

17 Q How did you come to work at Google?

18 A Google at that time, when I joined Google, was looking
19 for someone to run the media and entertainment business at
20 Google. And after a long interview process, I got that job.

21 Q And since that time, has your role expanded beyond
22 media and entertainment?

23 A It has. So I oversee multiple verticals for Google.

24 So those are industries. I oversee automotive, home and

25 personal care, food and beverage, consumer technology, media

Direct examination - A. Stewart

1 and entertainment, and our government and advocacy business.

2 Q Okay. And those verticals, are those the categories of
3 customers that you serve?

4 A They are. That's how our large customer sales teams
5 are organized.

6 Q Okay. So in your over 20 years of working in
7 advertising, has digital advertising changed over that time?

8 A It's changed -- incredibly changed. Digital
9 advertising has advanced so much over my career in
10 advertising. I did a little bit of it in my career at
11 Discovery. It's obviously much more advanced since then. I
12 think the data -- the capabilities of digital advertising
13 are far beyond what they were certainly back then. And I
14 think the other significant change is just our ability to
15 measure the outcomes of the work that we do.

16 Q And what do you mean by measuring the outcomes of the
17 work that you do?

18 A We work in an industry that is reliant on measurement:
19 How are the products that Google is offering or or our
20 competitors are offering, how are they performing relative
21 to all of the other choices that marketers have to advertise
22 and market themselves?

23 Q Could you give us an example of how measurement might
24 work in digital advertising?

25 A Sure.

Direct examination - A. Stewart

1 So one very common practice amongst marketers is media
2 mix modeling. And this is basically a way that marketers
3 can measure the different channels that they're advertising
4 in or different partners that they're advertising with. It
5 might be search, linear, television, and on through. And
6 what marketers are looking to understand as a result of that
7 measurement is their return on ad spend. For every dollar
8 that I invest, how much revenue am I gaining as a result.

9 Q Do you personally work with customers that use media
10 mix modeling in their marketing?

11 A Most of the customers I work with are using -- we call
12 them MMSs in their marketing.

13 Q What, if anything, does the availability of this
14 measurement data or media mix modeling mean for the
15 competitiveness of the digital advertising ecosystem?

16 A What it really means is that everyone who is in the
17 advertising ecosystem on the sales side needs to put forth
18 the best product that they have in order to measure for
19 their customer in order to provide return on investment for
20 their customer.

21 So from a competitive standpoint, whether you're
22 selling display or video or whatever product you have, you
23 need that product to perform as measured by a third party
24 better than the other choices that advertisers have in order
25 to continue to stay part of the transaction, in order to

Direct examination - A. Stewart

1 stay on the media buy.

2 Q So are the customers that you work with making
3 allocation decisions among advertising channels or formats
4 based on media mix modeling?

5 A Without question.

6 Q Okay. Now, despite that fact, are you aware that ad
7 agencies or advertisers might still have distinct budgets
8 for particular ad formats or channels?

9 A I am.

10 Q For example, some agencies might work with kind of
11 distinct social budgets?

12 A That's correct.

13 MR. TESLICKO: Objection, Your Honor. Leading.

14 THE COURT: Sustained.

15 BY MS. SESSIONS:

16 Q In your experience, are distinct budgets fixed?

17 A No.

18 Q What is your experience with respect to budgets that
19 are distinct for a particular channel?

20 A Yeah. My experience is that marketers representing the
21 companies that they work for are looking to get the highest
22 return on their investment. So marketers are looking at all
23 of the channels that they are advertising with, across all
24 of the partners that they are advertising with, using
25 measurement to make allocation changes as that measurement

Direct examination - A. Stewart

1 is available to them.

2 Q Does Google offer any advertising formats designed
3 specifically to compete for social media budgets?

4 A We do. So we have a format that's called DemandGen,
5 which was designed intentionally to compete with social
6 budgets.

7 MR. TESLICKO: Objection, Your Honor. It's
8 unclear unless the witness can lay a foundation that
9 DemandGen was launched prior to the close of fact discovery
10 here.

11 THE COURT: Let's get a context for that.

12 BY MS. SESSIONS:

13 Q Mr. Stewart, were DemandGen ads launched prior to the
14 September of 2023?

15 A Yes.

16 Q So could you just explain, again, what DemandGen ads
17 are?

18 A Yeah. So we have a couple of formats that are designed
19 to compete with social. DemandGen is one of them. And
20 DemandGen -- I am holding the microphone, so I will try to
21 demonstrate. There are feeds that are available for Google
22 products. So the Google app on a phone or the YouTube
23 application. And DemandGen service puts ads in those feeds
24 in a similar way that a user might see an ad on Instagram.

25 Q So if you -- if you could, turn if your binder --

Direct examination - A. Stewart

1 MS. SESSIONS: And if we could put up on the
2 screen, please, Stewart Demonstrative 1.

3 BY MS. SESSIONS:

4 Q And, Mr. Stewart, you can see it on your computer
5 screen. That might be easier than just going in your
6 binder.

7 A Yes.

8 Q Could you explain what is being shown on the left-most
9 pane of Stewart Demonstrative 1?

10 A Yeah. What we're looking at here is an image ad, a
11 DemandGen image ad. The ad is for Airbnb for \$218 a night,
12 I guess. And this is within the Google feed. So this is
13 the feed that I was talking about. If you have a Google app
14 on your phone and you are scrolling through it, you would
15 see this ad.

16 Q Okay. And the DemandGen ad in the Google feed, is that
17 an image ad?

18 A It is.

19 Q Okay. What's being shown in the center pane?

20 A The same ad in an Instagram feed.

21 Q Okay. And then on the right?

22 A The same ad on *The Washington Post*.

23 Q Okay. We can put that aside.

24 Mr. Stewart, when buying ads through Google, does a
25 customer have to buy only one ad format per campaign?

Direct examination - A. Stewart

1 A No.

2 Q Does Google offer any tools that help advertisers buy
3 across ad formats?

4 A Yeah, we do. I mean, we have basically ad formats that
5 run across multiple media types. So the one that's very
6 common for us right now is a product called Performance Max.
7 And so Performance Max includes search. It includes image
8 display advertising. It includes video advertising as well.
9 It runs across Google surfaces and outside Google.

10 Q Sorry. I didn't catch the end of that. I believe you
11 said it runs across Google surfaces and --

12 A And outside of Google.

13 (Reporter clarification.)

14 THE WITNESS: I'm sorry.

15 It runs on -- sorry. It runs on Google surfaces
16 like the one that we just looked at, and ads also run
17 outside of Google surfaces as well.

18 BY MS. SESSIONS:

19 Q So Performance Max ads could run on third-party
20 websites?

21 A That's correct.

22 Q Okay. Why does Google offer the Performance Max
23 product?

24 A So Performance Max is designed similar to what we were
25 talking about before. We design products, and we want our

Direct examination - A. Stewart

1 products to provide the greatest return on investment for
2 our advertisers. And Performance is a product that does
3 that across multiple surfaces and has demonstrated to show
4 really efficient and effective returns for our partners.

5 THE COURT: Are any of these products offered
6 through AdX -- I'm sorry, through Google Ads?

7 THE WITNESS: So Performance Max is available via
8 Google Ads. It's bought on Google Ads, the kind of front
9 buying door of Google.

10 THE COURT: Okay.

11 BY MS. SESSIONS:

12 Q How often does Performance Max adjust among formats?

13 A Yeah. This is, I think, where a lot of value gets
14 created for Performance Max. Media is complicated and
15 decisioning is complicated. And historically, where media
16 had been more siloed before and someone might have been
17 managing one particular search budget or display or video,
18 Performance Max, as a result of essentially AI, is allowed
19 to basically make decisioning to help provide the greatest
20 amount of run for marketers. So showing the right ad to the
21 right user at the right time to help our marketers gain
22 return on their investment.

23 Q And you work with -- you work with some of Google's
24 larger advertising customers; is that right?

25 A I do.

Direct examination - A. Stewart

1 Q And do you work with companies that use the Performance
2 Max product?

3 A I do.

4 Q Okay. If you could, please turn in your binder to
5 Tab 8.

6 A Will it come up on here as well?

7 MS. SESSIONS: And it won't show up there maybe
8 quite yet, but this is Defense Exhibit 1248. And this
9 document was discussed yesterday during Ms. Stefaniu's
10 testimony but was not moved into evidence at that time.

11 Your Honor, we would like to move it into evidence
12 at this time.

13 THE COURT: Any objection?

14 MR. TESLICKO: Your Honor, we'd object on hearsay,
15 and frankly, the relevance of this to the claims in this
16 case.

17 MS. SESSIONS: All right. Well, I can lay a
18 foundation for it as a business record, Your Honor.

19 THE COURT: Go ahead.

20 BY MS. SESSIONS:

21 Q Okay. Mr. Stewart, do you recognize this document
22 that's been marked as Exhibit 1248?

23 A I do.

24 Q What is it?

25 A This was a document that was put together. I run the

Direct examination - A. Stewart

1 FBRs, the food and beverage. That's one of my teams. And
2 this is a document that they put together to help getting
3 excited about selling -- and enable selling Performance Max.

4 Q Okay. Was this document prepared in the ordinary
5 course of Google's business?

6 A It was.

7 Q And did the people on your team who prepared this
8 document have knowledge of its contents when they made it?

9 A They did.

10 MS. SESSIONS: Your Honor, I would now move to
11 admit --

12 THE COURT: We have been admitting multiple
13 documents like this. It's in.

14 MS. SESSIONS: Thank you.

15 BY MS. SESSIONS:

16 Q Mr. Stewart, if you could just go to -- let's see --
17 page -- it's page 7.

18 A This document?

19 Q Yes, and its on your screen also now.

20 A Uh-huh.

21 Q Mr. Stewart, what is being depicted on page 7 of
22 Defense 1248?

23 A Yeah. This is just demonstrating some of the surfaces
24 that Performance Max is showing.

25 Q Thanks. You can put that aside.

Direct examination - A. Stewart

1 THE COURT: Does an advertiser who opts to use
2 Performance Max pay any different rate?

3 THE WITNESS: No.

4 THE COURT: So it's just part of the Google Ads
5 platform?

6 THE WITNESS: That's right. It's a Google product
7 offering. There's no special rate that's assigned to it in
8 any different structure than how we sell other
9 advertising -- other performance advertising.

10 THE COURT: And is that same feature available for
11 DV360 advertising?

12 THE WITNESS: Performance Max is not available on
13 DV360.

14 THE COURT: Thank you.

15 BY MS. SESSIONS:

16 Q Does Google offer any tools to its customers to convert
17 advertising creative from one format to another?

18 A We do.

19 Q Could you explain that?

20 A Yeah. I think DemandGen. What we saw is a really good
21 example of that. Video can be watched in different formats.
22 Some people watch video horizontally, and other people watch
23 video vertically.

24 Many advertisers don't create or may not have the types
25 of assets that they need in order to show up as best they

Direct examination - A. Stewart

1 can in a particular format. So we can help advertisers turn
2 their video essentially from being horizontal to vertical.
3 And we can also help advertisers who are image advertisers
4 create display ads -- create video ads. And we can also
5 help advertisers who may have video ads secure display out
6 of their ads as well.

7 Q Could you explain that last point, converting video
8 creative to display format?

9 A Yeah. I mean, video, you've obviously got a bunch of
10 images that can be valuable as display format. So we have
11 tools that are available that would allow us to make that
12 conversion.

13 Q Okay. And when you say allow us to make that
14 conversion, so Google would do the conversion?

15 A We help our partners do that.

16 Q Okay. Does Google also offer any tools that help
17 advertisers change the size of their creatives?

18 A Yeah. The versions that I talked about before
19 essentially does change the size because you have gone from
20 something that's horizontal on a wide screen. And when you
21 make it a smaller screen and you are seeing it on your
22 mobile device, it has to be sized appropriately for that
23 device. So it is still a high-quality ad. It doesn't lose
24 its impact. So we do help our marketers do that.

25 Q Okay. I want to turn now to talking about Display &

Direct examination - A. Stewart

1 Video 360 and Google Ads.

2 So do you have customers that use both Google Ads and
3 Display & Video 360?

4 A I do.

5 Q Okay. And do you know if the customers that you work
6 with are also buying ads through non-Google buying tools?

7 A Yes.

8 Q Okay. Does Google place any restrictions on where a
9 Google Ads' customer can buy ads?

10 A None.

11 Q Okay. Does Google place any restrictions on where a
12 DV360 customer can buy other ads?

13 A No.

14 Q Okay. If you could now turn in your binder to Tab 5,
15 please, which is Defense Exhibit 486.

16 THE COURT: Are you moving that in?

17 MS. SESSIONS: Yes, Your Honor.

18 THE COURT: Any objection?

19 MR. TESLICKO: Just the same hearsay objection,
20 Your Honor.

21 THE COURT: Let's just lay a foundation for it.

22 MS. SESSIONS: Yes, Your Honor.

23 BY MS. SESSIONS:

24 Q Mr. Stewart, do you recognize the document at Tab 5 in
25 your binder, which is Defense Exhibit 486?

Direct examination - A. Stewart

1 A I do.

2 Q What is it?

3 A This was a planning document from November 2017. It is
4 a common document that we have looking at our products and a
5 go-to-market position that we have for the products.

6 Q And what's a go-to-market position?

7 A Well, go-to market is essentially -- go-to market is
8 actually a function within Google. So as we are working on
9 our products, we want to ensure that we have teams that are
10 supporting our ability to bring those products to market.

11 Q Okay. And I'll just ask you to slow down just a little
12 bit, Mr. Stewart.

13 A Thank you. Okay.

14 Q Thank you.

15 Was this document prepared in the ordinary course of
16 Google's business?

17 A It was.

18 Q And did the people who prepared it have knowledge of
19 its contents when they made it?

20 A They did.

21 MS. SESSIONS: Your Honor, we move to admit
22 Defense Exhibit 486.

23 THE COURT: It's in.

24 MS. SESSIONS: Thank you.

25 BY MS. SESSIONS:

Direct examination - A. Stewart

1 Q Now, in the binder, I think there are two printouts of
2 this document. There's the original stamped version, and
3 then behind a blue sheet, there's a printout that's a little
4 bit more legible. And so you may want to use the version
5 behind the blue sheet.

6 If you could, turn to page 4 of the 486N version behind
7 the blue sheet. And it's also going to be on your screen.

8 A I will look at it on the screen.

9 Q Okay. Could you please explain at a high level what
10 page 4 of this document is showing?

11 A Yeah. This is a fairly common frame that we use. It's
12 a focusing facts just trying to understand what's happening
13 with our products and also what's happening with the market
14 at the same time.

15 Q Okay. And what's GDN at the top of this slide?

16 A Yeah, Google Display Network.

17 Q Okay. Is that -- are those ads that can be bought via
18 Google Ads?

19 A They are.

20 Q Okay. If you could, look at the first bullet. It
21 says, "Market & competitive baseline."

22 A Uh-huh.

23 Q "Substantial untapped opportunity within Display+Video
24 market, with significant competition, primarily from
25 Facebook, Criteo, Amazon." Do you see that?

Direct examination - A. Stewart

1 A Yes. Yes, I do.

2 Q Okay. What is this bullet?

3 A Yeah. I mean, this was, you know, understanding where
4 we were performing relative to the market and recognizing
5 that we were facing competition from Facebook, Criteo, and
6 Amazon.

7 Q Okay. And then could you look at the second bullet,
8 please.

9 A Yeah.

10 Q The second bullet says, "Revenue and growth are highly
11 concentrated and dual platform usage (DBM+GDN) is high." Do
12 you see that?

13 A Yes. Yes, I do.

14 Q Okay. What is the reference to revenue and growth
15 being highly concentrated?

16 A The second bullet point below it illustrates that
17 point. 40 percent of the customers that were being serviced
18 by the large customer sales organization represented
19 70 percent of the display revenue.

20 Q Okay. And then what is the reference to dual platform
21 usage?

22 A Yeah. These are clients -- so DBM, the prior name for
23 DV360, and GDN. This means that these clients were using
24 both DBM and GDN at the same time.

25 Q All right. If you could, now turn to page 5 of this

Direct examination - A. Stewart

1 document. I think it's the next page.

2 And just in the interest of speeding this along,
3 Mr. Stewart, does this slide also reflect a discussion of
4 the competition from Facebook, Criteo, and Amazon that we
5 discussed with respect to Slide 4?

6 A It does.

7 Q Okay. Let's turn to page 6, please.

8 And what is page 6 showing?

9 A Yeah. A discussion of a similar point but with more
10 focus in terms of how we were competing with Facebook at
11 this time. We were looking at Facebook's revenue
12 acceleration in display and video relative to Google. And
13 then we were looking at kind of the year-over-year change
14 here with regards to growth rate looking at Google DBM,
15 Facebook, and Google GDN.

16 Q And then if you could, turn to page 7, please.

17 And is this slide -- does this slide provide more
18 detail about the revenue concentration?

19 A It does.

20 Q Okay. And so this slide, just, again, in the interest
21 of moving it along, reflects that 10 percent of the clients
22 are making up 70 percent of the GDN revenue in 2017?

23 A That's correct.

24 Q Okay. Do smaller advertisers use -- actually, I'll ask
25 you that question at a later time.

Direct examination - A. Stewart

1 Could you turn to page 9 of this document.

2 And does this -- does page 9 provide more information
3 about the dual platform usage?

4 A It does. This is a more close look at the segmentation
5 depending upon -- based upon how clients were using our
6 products. So high DBM; hybrid -- using both -- full DBM;
7 high GDN; and full GDN.

8 Q And just because there are a lot of acronyms, the DBM
9 here, what is that?

10 A Yes. Yeah. DV360, as it's known today.

11 Q Okay, got it.

12 And is this -- is the data on this slide consistent
13 with your experience that customers use both DV360 and GDN
14 or Google Ads?

15 A Yes.

16 Q Okay. Let's turn to page 15 now, please.

17 And I'd like to ask you about the competitive selling
18 capability bullet point on this slide.

19 A This is a discussion about specialism, which is our
20 resources that are put in place in order to support a
21 particular product. And the point on competitive
22 capabilities, again, pointing out that GDN was competing
23 with players who were focused on the display business,
24 Facebook, Criteo, Amazon, DSPs, and others.

25 Q Okay. And this slide says DSPs, and you mentioned

Direct examination - A. Stewart

1 DSPs. So did Google believe that GDN or Google Ads was
2 competing with DSPs?

3 A Yes.

4 Q Okay. You can put that document aside.

5 Mr. Stewart, are there smaller advertisers that use
6 Display & Video 360?

7 A There are.

8 Q Could you give an example of some smaller advertisers
9 that you work with that use Display & Video 360?

10 A Yeah. There are a couple of industries that I serve in
11 particular that do have clients that use DV360.

12 So one example would be the automotive business.
13 Obviously, you have manufacturers, but the automotive
14 business goes all the way through to regional associations.
15 So the Southern California Dealer Association. And then
16 there are dealers that sit underneath that in dealer groups.
17 Some of those companies do use DV360 all the way through.

18 In addition, I work with restaurants, quick-serve
19 restaurants in particular. So companies like McDonald's and
20 Wendy's, they have their national efforts, but they also
21 have other efforts that go underneath that in terms of local
22 franchisees. And some of those companies are using DV360 as
23 well.

24 Q I'd now like to turn to an example of another
25 particular advertiser that you've worked with. Could you

Direct examination - A. Stewart

1 turn to Tab 2 in your binder, please.

2 MS. SESSIONS: And this is Defense Exhibit 1214,
3 which we would move into evidence, Your Honor.

4 THE COURT: Any objection to 1214?

5 MR. TESLICKO: Your Honor, we would object on
6 hearsay, and this appears to be some kind of a pitch
7 relating to a particular FAA contract, which is no longer
8 particularly relevant to this case.

9 MS. SESSIONS: Your Honor, I'm happy to lay a
10 foundation for this document as a business record, and we
11 are using this as an example of a representative advertiser
12 and advertising campaign. It is not for the fact that this
13 is a federal agency advertiser but for some specific work
14 that this particular advertiser did.

15 THE COURT: Well, it's more like a demonstrative,
16 isn't it, at this point?

17 MS. SESSIONS: Well, this is -- I'm happy to lay a
18 foundation for the document as a business record as well.
19 But I was just making the point, Your Honor, that we are
20 not -- we are using this document to make some points about
21 the way that advertising was purchased and the particular
22 advertising purchases made in this campaign, not simply
23 because this is a federal agency advertiser.

24 THE COURT: Well, this document is not showing
25 that something was actually purchased. Isn't this showing

Direct examination - A. Stewart

1 what was -- I think the plaintiffs' counsel said pitched.

2 MS. SESSIONS: Well, if I may lay a foundation,

3 Your Honor.

4 THE COURT: All right.

5 BY MS. SESSIONS:

6 Q Mr. Stewart, do you see the document at Tab 2 of your
7 binder?

8 A I do.

9 Q Could you explain -- do you recognize it?

10 A I do.

11 Q Could you explain what it is, please?

12 A Yeah. This document is a recap of the joint business
13 partnership that we have with the Army and their agency. It
14 was prepared for me in a review of the business. We like to
15 celebrate some of the work that we're proud of. That's
16 where this document originated.

17 Q So does this document, Defense Exhibit 1214, reflect
18 some of the advertising purchases or campaign strategies
19 that you and your team and the Army actually executed on?

20 A It does.

21 Q Okay. And was this document prepared in the ordinary
22 course of business?

23 A It was.

24 Q Okay. And the people who prepared it on your team had
25 knowledge of its contents when they made it?

Direct examination - A. Stewart

1 A Yes.

2 MS. SESSIONS: Your Honor, we move to admit
3 Defense Exhibit 1214.

4 THE COURT: And from the information on the first
5 page, this was produced in 2022. Is that right?

6 THE WITNESS: That's correct.

7 THE COURT: Yeah. Then it's appropriate. It's
8 in.

9 MS. SESSIONS: Thank you, Your Honor.

10 BY MS. SESSIONS:

11 Q Could you please turn to page 19.

12 And on page 19 on the left-hand side, there's a heading
13 where Army was. Could you explain what's being shown
14 underneath that heading?

15 A Yeah. This is a listing of different partners that the
16 Army was using to purchase media whether they were direct
17 publishers or other partners.

18 Q So you said direct publishers or other partners?

19 A Yes.

20 Q Could you explain that?

21 A Yes. So you've got direct publisher buying at the
22 bottom with Turner, Bleacher Report, and Viacom being
23 mentioned. And then you have other partners, like DSPs,
24 like Display & Video 360, Trade Desk, and other trading
25 partners, MiQ and AppNexus and others.

Direct examination - A. Stewart

1 Q So the Army was buying both directly from publishers
2 and through DSPs and trading partners?

3 A That's correct.

4 Q What is a non-DSP trading partner?

5 A So they offer different media buying services that are
6 not acting as a DSP.

7 Q Okay. Then if you could, go to page 21, please. And
8 I'd like to ask you something about the notes here on
9 page 21.

10 A Yeah.

11 Q There's a discussion of using cookie overlap reports in
12 campaign manager?

13 A Uh-huh.

14 Q And it says, "We are able to see what publishers Army
15 is running direct with, and what percentage of impressions
16 served on those publishers directly overlap with DV360
17 impressions."

18 And then there's a description of an overlap chart
19 above. Could you explain what this means?

20 A What this is saying is that the Army was purchasing
21 media from multiple partners, and there was significant
22 overlap in the media they were purchasing.

23 It correlates to what we've determined basically is
24 reach and frequency. This is the frequency side. And what
25 this essentially is offering the Army or indicating to the

Direct examination - A. Stewart

1 Army is that they're probably hitting the same consumer
2 many, many times, the same potential recruit many, many
3 times. There's diminishing returns in that.

4 Q So just to make sure I understand, the Army was buying
5 some impressions direct from publishers?

6 A That's correct.

7 Q And the Army was buying some impressions through DV360?

8 A That's correct.

9 Q And those direct bought and DV360 impressions were
10 potentially hitting the same recruits with the same
11 advertising?

12 A Yes.

13 Q Let's now look at another document. Please, if you
14 could, turn to Tab 1 of your binder, and this is Defense
15 Exhibit 1429.

16 THE COURT: Are you moving it in?

17 MS. SESSIONS: Yes, Your Honor.

18 THE COURT: So it's another one of the Google
19 documents. I assume it's the same objection. So why don't
20 you just lay a foundation.

21 MS. SESSIONS: Thank you, Your Honor.

22 BY MS. SESSIONS:

23 Q Mr. Stewart, do you recognize the document that's been
24 marked as Defense Exhibit 1429?

25 A I do.

Direct examination - A. Stewart

1 Q What is it?

2 A This is a document that was prepared for the Army and
3 their agency to talk about the partnership that we have and
4 our planning for 2024.

5 Q Okay. And was it prepared in the ordinary course of
6 Google's business?

7 A It was.

8 Q And did the people who prepared it have knowledge of
9 its contents when they made it?

10 A They did.

11 MS. SESSIONS: All right. Your Honor, we move to
12 admit Defense Exhibit 1429.

13 THE COURT: Any objection?

14 MR. TESLICKO: Your Honor, I still think this is
15 made for an Army audience and is not -- does not appear to
16 be a business record that would have been relied upon by
17 Google for purposes of running their business so much as to
18 pitch the Army on the 2024 joint business plan.

19 BY MS. SESSIONS:

20 Q Mr. Stewart, what is a joint business plan?

21 A We have joint business plans with many of our partners,
22 and what they're designed to do is help us understand what
23 our partners' goals are and for us to bring forth what we
24 have to help work towards those goals.

25 THE COURT: Is this a response to what the Army

Direct examination - A. Stewart

1 has indicated to you their goals are?

2 THE WITNESS: When we go into a joint business
3 plan, we have an understanding, a general understanding of
4 what those goals are, and we are working with them to show
5 them how we are basically going to be able to deliver on
6 those goals.

7 THE COURT: So this document is a response --
8 basically, it represents your understanding of what the Army
9 is looking for?

10 THE WITNESS: It does.

11 THE COURT: It's in.

12 MS. SESSIONS: Thank you, Your Honor.

13 BY MS. SESSIONS:

14 Q And this one has a blue sheet in the middle. An easier
15 to read version is behind the blue sheet.

16 A Thank you.

17 Q So if you could, turn to page 10 of the blue sheet
18 version.

19 THE COURT: Now, we don't need both in the record.
20 So we'll keep the better form, and that's the one that's the
21 one on the website.

22 MS. SESSIONS: Understood, Your Honor.

23 BY MS. SESSIONS:

24 Q Do you see -- oh, sorry. Are we on the wrong page?

25 Oh, no. We're there.

Direct examination - A. Stewart

1 I want to ask you about the third point here, which
2 says, "Local & National Synergies."

3 A Yes.

4 Q And in particular, the third bullet point, which says,
5 "Education & training sessions across local programmatic
6 team."

7 A Yes.

8 Q What does the local programmatic training sessions
9 refer to?

10 A This refers to supporting the Army and their ability to
11 work effectively locally. The Army's ability to find
12 recruits varies depending upon certain markets. So this was
13 basically -- an offer basically in response to that to
14 provide education and training for programmatic teams that
15 were going to be working locally.

16 Q Sorry. You said programmatic teams that were going to
17 be working locally?

18 A Yes.

19 Q So was the Army purchasing through programmatic
20 advertising local advertising?

21 A The Army was using --

22 MR. TESLICKO: Objection, Your Honor. Leading.

23 THE COURT: Sustained.

24 BY MS. SESSIONS:

25 Q Okay. What kind of advertising is this referring to?

Direct examination - A. Stewart

1 A So the other previous examples that I mentioned, like
2 automotive where you have dealers and dealer groups, this is
3 a similar approach. The Army is utilizing DV360 in order to
4 buy local advertising.

5 Q Would local advertising through DV360 include
6 advertising in local newspapers?

7 A It could.

8 Q And I think we've already gone through maybe some other
9 examples of DV360 advertisers buying local advertising.

10 THE COURT: That's not a question. That's a
11 statement.

12 MS. SESSIONS: I will move on, Your Honor.

13 Thank you.

14 BY MS. SESSIONS:

15 Q I'd like to shift and talk a little bit more about
16 competition.

17 A Okay.

18 Q When you walk into a meeting, who are you selling
19 against?

20 A We sell against the broad choices that marketers have
21 to where they would place their media. So that could be
22 inclusive of companies like Amazon, Meta, Snapchat, NBC
23 Universal, and increasingly, companies like Walmart.

24 Q How is Walmart a competitor to Google Ads or Display &
25 Video 360?

Direct examination - A. Stewart

1 A So retail media, companies like Walmart and Target and
2 many others, is one of the fastest growing segments of the
3 media business. Walmart has data that consumer package good
4 companies and others are interested in. So Walmart has
5 built essentially Walmart Connect, and they have a DSP that
6 is actually powered by The Trade Desk. So we're
7 increasingly competing with companies like Walmart in that
8 fashion.

9 Q If you know, the advertising that can be bought through
10 Walmart partnership with The Trade Desk -- I'll ask you a
11 better question.

12 Where can that advertising be bought?

13 A Well, that advertising -- so the actual function --
14 it's powered by The Trade Desk. Walmart Connect is the name
15 of Walmart's retail media network.

16 Q Where do those ads show up?

17 A They show up in connected television. They will show
18 up in a display. They'll show up in other videos. So
19 similar choices as other media types and other programmatic
20 sellers.

21 Q Okay. And I believe you testified earlier that Google
22 views Amazon as a competitor in advertising.

23 A We do.

24 Q Could you turn to Tab 10 of your binder, please.

25 MS. SESSIONS: And this is Defense Exhibit 435,

Direct examination - A. Stewart

1 Your Honor.

2 THE COURT: All right. Just lay a foundation.

3 BY MS. SESSIONS:

4 Q Okay. Mr. Stewart, if you are there, do you recognize
5 this document that's been marked as Defense Exhibit 435?

6 A I do.

7 Q What is it?

8 A A competitive analysis that was prepared in 2018 to
9 understand what Amazon was doing in the display business.

10 Q Does Google prepare competitive analyses like these in
11 the ordinary course of its business?

12 A This is a common practice in the course of our
13 business.

14 Q And what is the purpose of these competitive analyses?

15 A It helps our teams, be it leadership or our sellers,
16 understand our competition.

17 MS. SESSIONS: Your Honor, I would move Defense
18 Exhibit 435 into evidence.

19 MR. TESLICKO: Objection, Your Honor.

20 THE COURT: All right.

21 MR. TESLICKO: I would also note that Mr. Stewart
22 doesn't appear as one of the authors, and it is unclear if
23 these people worked as part of Mr. Stewart's business
24 organization.

25 THE COURT: Do you recognize any of the names on

Direct examination - A. Stewart

1 the front?

2 THE WITNESS: I do.

3 THE COURT: Do any of them work with you or for
4 you?

5 THE WITNESS: In the past, but not currently.

6 THE COURT: Would they have been working for you
7 in 2017, '18?

8 THE WITNESS: No.

9 MS. SESSIONS: So if I may, Your Honor?

10 THE COURT: Go ahead.

11 BY MS. SESSIONS:

12 Q Despite the fact that the people whose names are on
13 this document were not on your team, is this a sort of
14 document that you might have used or your team might have
15 used in your work?

16 A Yes.

17 THE COURT: I'm still going to let it in.

18 MS. SESSIONS: Thank you, Your Honor.

19 BY MS. SESSIONS:

20 Q I'm actually not going to ask you any questions about
21 this document, Mr. Stewart.

22 THE COURT: Well, then why did you even have it?

23 MS. SESSIONS: Because, Your Honor, this is -- in
24 trying to move this along, we have --

25 THE COURT: I appreciate everybody's interest in

Direct examination - A. Stewart

1 moving it along. At the same time, as I've said before,
2 with these exhibits, I want some context. If there's
3 something valuable in this exhibit, you should be bringing
4 it out with a witness.

5 MS. SESSIONS: Understood, Your Honor. I will say
6 this exhibit, as well as two others that we have, we are
7 offering really for the purpose of demonstrating to Your
8 Honor that Google does competitive analyses of these
9 companies in the ordinary course of its business.

10 THE COURT: I think I can take judicial notice of
11 that, frankly. Of course, we've heard that.

12 MS. SESSIONS: All right. In that case --

13 THE COURT: To unclutter the record, I'm not going
14 to admit 435.

15 MS. SESSIONS: Okay. Thank you, Your Honor.

16 BY MS. SESSIONS:

17 Q Mr. Stewart, are you familiar with something called AMG
18 off-site?

19 A I am.

20 Q What is the AMG off-site?

21 A The AMG off-site -- this is a leadership team of the
22 Americas, a team that I sit on. We meet once a quarter at
23 an off-site to discuss business.

24 Q And are there written materials prepared for the AMG
25 off-site meetings?

Direct examination - A. Stewart

1 A Every one.

2 Q Okay. Do you recall attending an off-site meeting in
3 or around June of 2019?

4 A Yes.

5 Q Could you turn to Tab 7 of your binder, please, and
6 this is Defense Exhibit 733.

7 THE COURT: Is there any objection to this
8 document?

9 MR. TESLICKO: Just the normal objection that I
10 don't think a full foundation has been laid to make this --

11 THE COURT: Did you read this document?

12 THE WITNESS: Yes.

13 THE COURT: All right. That's enough foundation.
14 It's in.

15 BY MS. SESSIONS:

16 Q Mr. Stewart, this presentation or document is titled
17 "Accelerating Display." What does display refer to here?

18 A It's referring to display advertising.

19 Q And again, this is one where we've got a more legible
20 version behind the blue sheet. So if you could, go to
21 page 3 of the blue sheet version, please, and it will be on
22 your screen.

23 This slide has a heading "Key takeaways on Display
24 performance." And then under that, it says, "Loosing share
25 in US Display market overall and to key competitors (FB &

Direct examination - A. Stewart

1 TTD) primarily driven by GDA."

2 Could you explain what that means?

3 A What this is saying is that we recognized that we were
4 losing share to Facebook and to The Trade Desk and that the
5 losses were coming primarily from GDA, which is the same as
6 GDN to clarify.

7 Q Okay. Could you then go down to the next heading
8 here --

9 MS. SESSIONS: Thank you, Mr. Spalding.

10 BY MS. SESSIONS:

11 Q -- that starts with, "Growth deceleration." And the
12 minor -- the first minor bullet there says, "Majority of
13 decline driven from torso clients (-\$20M GDA growth)" --

14 What is the reference to torso clients here?

15 A It's a reference to a segmentation of clients. So
16 within the LCS channel of Google, head clients would be the
17 largest clients. Torso clients is that middle section of
18 clients, and then there are also tail customers. What this
19 was just noting is that we were seeing declines from this
20 torso set of customers.

21 THE COURT: Would that be medium-size clients?

22 THE WITNESS: Yes, within the large customer
23 sales. Yes, exactly, kind of midsize.

24 BY MS. SESSIONS:

25 Q And if you could, then, turn to page 5 of this

Direct examination - A. Stewart

1 document.

2 What is being shown on page 5?

3 A Yeah. So what this is looking at are growth rates and
4 looking at where -- reporting growth rates of the U.S.
5 display market, so the industry overall; what was happening
6 with Google and GDA, which is that light blue; DV360 as
7 well, the darker blue; and the trend line that we saw with
8 Facebook.

9 Q Okay. Could you please then turn to page 17.

10 Are you there? It's on your screen.

11 A Yeah, it's on the screen.

12 Q Okay. And what -- at a high level, what is page 17
13 depicting?

14 A Yeah. This is a deeper assessment of where it was that
15 we were seeing kind of where we were and basically where we
16 were losing. So it's looking at a couple of different
17 categories here with regards to both measurement, creative,
18 and data. There's also an assessment of kind of where we
19 were currently and where we were projected to be by the end
20 of the year.

21 Q Mr. Stewart, which companies is Google comparing its
22 display products to on this page?

23 A Amazon, Facebook, Instagram, Criteo.

24 Q Okay. You can put that document aside, please.

25 Could you now turn to Tab 3 of your binder, which is

Direct examination - A. Stewart

1 Defense Exhibit 1132.

2 THE COURT: Any objection to 1132?

3 MR. TESLICKO: Just the same hearsay objection
4 absent a foundation and some connection to this witness,
5 Your Honor.

6 MS. SESSIONS: I'm happy to lay a foundation, Your
7 Honor.

8 THE COURT: Go ahead.

9 BY MS. SESSIONS:

10 Q Mr. Stewart, do you recognize this document?

11 A I do.

12 Q What is it?

13 A A planning document that was used in September of '21
14 to plan for 2022.

15 Q Okay. And this says ALCS on it. What is ALCS?

16 A America's large customer sales.

17 Q And so is that your group at Google?

18 A Yes. Yes.

19 Q Was this document prepared in the ordinary course of
20 Google's business?

21 A It was.

22 Q And did the people who prepared it have knowledge of
23 its contents when they made it?

24 A They did.

25 MS. SESSIONS: I move to admit Defense

Direct examination - A. Stewart

1 Exhibits 1132, Your Honor.

2 THE COURT: It's in.

3 MS. SESSIONS: Thank you.

4 BY MS. SESSIONS:

5 Q If you could, please turn to page 5 of this document.

6 There's a section that begins at page 5. Could you
7 just explain what this section of the document is?

8 A Yeah. If I could get that -- is it page 5 or -- oh,
9 sorry. Yeah, Market & ALCS context. So this is just a look
10 at -- as we're planning for the next year, we want to
11 understand what's happening in the market -- in the
12 advertising market in the Americas and then also
13 contextualize it for where we are in that market as well.

14 Q Could you turn to page 9, please, in that document.

15 And what does page 9 reflect?

16 A A competitive environment. So what we're looking at
17 here are Facebook ads, which were having growth that was
18 faster than Google Ads despite a narrow gap you see there;
19 Amazon; and Microsoft within search. And then sharing
20 non-search ads, what we saw was that there was continued
21 growth happening with companies like TikTok, Snap,
22 Pinterest, and Twitter.

23 Q The non-search ads on the right-hand side of this
24 slide, would that include display ads?

25 A Display and video.

Direct examination - A. Stewart

1 Q Okay. Could you please turn to page 10.

2 And I'd like to ask you about the last point on the
3 left-hand side with the little arrows. It says, "Ability to
4 quickly shift resources to cost-effective, efficient digital
5 platforms when necessary."

6 A Yeah.

7 Q Do you see that?

8 A I do.

9 Q How did this relate to Google's large customer sales
10 business planning in 2022?

11 A We recognized that our partners and our CMOs were under
12 incredible pressure to deliver the highest amount of return
13 they can for the investment that they were making. This
14 particular point is basically pointing towards the fact that
15 CMOs had a lot of choice and that they were going to be able
16 to make decisions, that they were going to make decisions
17 based on the choice they have and at times -- continuing
18 through today -- they are always looking for the most
19 cost-effective and efficient platforms.

20 Q Could you, please, then turn to page 12.

21 This page starts with a heading, "eCommerce remains a
22 dynamic space."

23 Do you see that?

24 A I do.

25 Q Could you explain what this eCommerce point is and how

Direct examination - A. Stewart

1 it relates to planning for Google's large customer business
2 2022?

3 A Yes. So the eCommerce trend that grew so rapidly
4 during COVID changed how consumers were buying products.
5 And when consumers were shifting from buying things in
6 retail stores to buying things online, Walmart, CVS, Target
7 Home Depot and the other companies you see there, it
8 basically changes how those marketers are thinking about
9 their advertising.

10 Q How does it change how marketers are thinking about
11 their advertising?

12 A In this case, marketers were thinking about -- with the
13 movement towards eCommerce, marketers -- back to the
14 previous point about having measurable accountable cost
15 efficient and effective advertising. In this case, it's
16 highly measurable when a transaction takes place online.

17 Q This slide also says kind of on the right-hand side,
18 "Competition increasing as existing and new players react to
19 consumer behavior."

20 A Yes.

21 Q What does that mean?

22 A This just meant that as this was taking place in other
23 companies -- like Amazon is obviously very large in
24 eCommerce -- that that was just increasing the competitive
25 environment for us. This kind of led to what we were

Direct examination - A. Stewart

1 talking about before with regards to the rising of retail
2 media networks.

3 Q All right. You can put that document aside.

4 Thank you.

5 Does Google also face competition from companies that
6 offer buying tools for display ads?

7 A We do.

8 Q Could you give me some examples?

9 A The Trade Desk is a good example. Yahoo would be
10 another example.

11 Q How is Yahoo a competitor?

12 A Yahoo has a DSP, and they are often competing for the
13 same DSP opportunities that we are.

14 Q Okay. And then you mentioned The Trade Desk?

15 A The Trade Desk.

16 Q How is The Trade Desk a competitor?

17 A A very big DSP. They work with a lot of partners.

18 Q Okay. Is The Trade Desk -- I believe you testified
19 before The Trade Desk is involved in retail media networks.

20 A They are.

21 Q Does Google do competitive analyses of companies like
22 The Trade Desk?

23 A We do.

24 Q Okay. If you could, turn to Tab 4 of your binder,
25 please, and this is Defense Exhibit 1053.

Direct examination - A. Stewart

1 Mr. Stewart, I'll ask you: Do you recognize Defense
2 Exhibit 1053?

3 A I do.

4 Q What is it?

5 A This is a competitive overview of The Trade Desk.

6 Q Was this competitive overview of The Trade Desk
7 prepared in the ordinary course of Google's business?

8 A It was.

9 Q And did the person who prepared this competitive
10 overview have knowledge of its contents when they made it?

11 A Yes.

12 MS. SESSIONS: Your Honor, we move to admit
13 Defense Exhibit 1053.

14 THE COURT: All right. It's in.

15 MS. SESSIONS: Thank you, Your Honor.

16 BY MS. SESSIONS:

17 Q Could you please turn to page 4, again, of the version
18 behind the blue sheet.

19 A Yeah.

20 Q Could you please explain what's being shown on page 4.

21 A Yeah. What we were looking at page 4 was essentially a
22 view in terms of the reasons why customers were choosing The
23 Trade Desk as compared to DV360 and listing them with dollar
24 amounts that were assigned to them in terms of what we had
25 already lost or what we felt was at risk on the basis of

Direct examination - A. Stewart

1 these different areas of product.

2 Q Could you explain what the CTV bar is?

3 A Yeah, connected television.

4 Q Okay. And then there's a bar that says targeting
5 limits.

6 A Yeah.

7 Q What is that?

8 A This is a reference to categories that Google deems as
9 sensitive categories, like pharma and gambling, where we
10 have different policies than The Trade Desk does. Our
11 policies don't offer some of the same things that The Trade
12 Desk does in terms of maybe targeting capability for others.
13 So we felt and saw here that we had lost some customers in
14 this area and we were at risk for losing more as a result of
15 the policy differences between Google and The Trade Desk.

16 Q Are these policy differences a competitive
17 differentiator for The Trade Desk?

18 A Yes.

19 MR. TESLICKO: Your Honor, leading.

20 THE COURT: Sustained.

21 BY MS. SESSIONS:

22 Q How, if at all, does this policy point affect
23 competition with The Trade Desk?

24 A It significantly affects competition with The Trade
25 Desk because they are willing to do things in a way that

Direct examination - A. Stewart

1 maybe the marketers had chosen but that Google won't let
2 them. So it gives them a competitive advantage.

3 Q And please hold the microphone up.

4 A Sorry about that.

5 Q Thank you.

6 Mr. Stewart, do you know what The Trade Desk's Open
7 Path is?

8 A I believe I know what Open Path is. I think this is
9 their new SSP version of what they're doing, but I don't
10 know that much about it.

11 Q Could you turn to page 8, please.

12 Could you please explain what's being shown on page 8?

13 A Yeah. This is an analysis of the cost and fee
14 structure between Google -- between DV360 and The Trade
15 Desk, including take rate and other factors.

16 Q And I want to ask you about a couple of lines here. So
17 maybe let's start with fraud and brand safety. Do you see
18 that?

19 A Yes.

20 Q What does it mean when it says CPM fee under The Trade
21 Desk?

22 A Yeah. This is a common discussion that we have with
23 our partners when they're evaluating Google DV360 against
24 The Trade Desk. And what this references to is that Google
25 DV360 provides this fraud and brand safety protection at no

Direct examination - A. Stewart

1 cost, and The Trade Desk has additional fees above and
2 beyond their rate in order for an advertiser to utilize
3 those services.

4 Q In your experience, whose all-in fees are higher?
5 Google's or The Trade Desk?

6 A In my experience, The Trade Desk is higher.

7 Q And is that because of some of these added CPM fees?

8 A It is definitely driven by the additional fees that
9 advertisers get -- with advertisers, this is a discussion
10 that we have, I think, when they look back. While their
11 take rate differential could be lower in some cases, most
12 advertisers are utilizing these services, audience data,
13 contextual targeting, all of these other things here. And
14 by the time they look back, many do find that their fees
15 with The Trade Desk are higher than their fees are with
16 Google DV360.

17 Q All right. You can now put that document aside.

18 Thank you.

19 Mr. Stewart, have there been any notable new entrants
20 in the digital advertising market in recent times but before
21 September of 2023?

22 A Yeah. I think the most notable new entrant in
23 advertising is Netflix.

24 Q And could you explain what you mean by that?

25 A Yeah. So Netflix for a very long period of time said

Direct examination - A. Stewart

1 that they were never going to accept ads. But as their
2 business continued to change and consumption changed to many
3 other things, Netflix decided to create an ad tier for their
4 business where for a lower subscription price, you would
5 gets ads with your Netflix.

6 Q Was Google trying to support Netflix when it launched
7 this advertising product?

8 A We were, yes.

9 Q What happened?

10 A So there were multiple companies that were talking to
11 Netflix at this time to become the tech provider DSP, and
12 Netflix -- I think Microsoft, NBCU, Google, and probably
13 some others were in that discussion. Ultimately, Netflix
14 chose Microsoft.

15 Q And what did it mean when Netflix chose Microsoft?

16 A That they chose Microsoft to be their partner in
17 building out their ad platform.

18 Q What, if anything, did that mean for where marketers
19 could buy ads on Netflix?

20 MR. TESLICKO: Objection, Your Honor. I just ask
21 for a clarification on when the events being discussed
22 happened, if that was past the discovery cutoff in this
23 case.

24 THE COURT: I think that was the preface in the
25 question originally about Netflix.

Direct examination - A. Stewart

1 MS. SESSIONS: Yes.

2 THE COURT: More specifically, do you know?

3 THE WITNESS: This goes back several years, two
4 plus, maybe three.

5 MR. TESLICKO: Okay, Your Honor.

6 BY MS. SESSIONS:

7 Q Okay. So what, if anything, did this partnership mean
8 for the availability of ads on Netflix?

9 A They were going to be sold by Microsoft.

10 Q Mr. Stewart, has Google also -- has Google partnered
11 with any companies that might have previously been known as
12 walled gardens to buy ads on their platforms?

13 A We have.

14 Q Could you give an example?

15 A Sure. So right now there are a few companies
16 considered perhaps as walled gardens where you can buy ads
17 through Google. Pinterest would be one. X would be
18 another.

19 Q And is X -- what was X formerly known as?

20 A Formerly known as Twitter.

21 MS. SESSIONS: And just for the record -- I
22 understand that previously there had been an objection to
23 this testimony as potentially involving things that were not
24 disclosed during the fact discovery period. But we, in
25 fact, went back and looked, and Google did produce documents

Direct examination - A. Stewart

1 to the Department of Justice that reflect these partnership
2 discussions during the fact discovery period.

3 BY MS. SESSIONS:

4 Q Mr. Stewart, one last question for you, I hope.

5 You've worked at Google for a long time?

6 A I have.

7 Q Why do you stay working at Google?

8 A So I've been advertising for 33 years. You were kind
9 with the 20s. So thank you for that.

10 And in my career in advertising -- selling Discovery
11 and coming up with Discovery was a really great experience,
12 but I never really was able to see the impact of the work
13 that we were doing. I couldn't really tell if the ads that
14 we were making available were really, truly making a
15 difference.

16 And one of the things that I've experienced at Google
17 and one of the reasons why I've stayed at Google for as long
18 as I have is because I can sit across from our partners and
19 show them what we've done. I have the opportunity to work
20 with partners like St. Jude, who at one point in time were
21 really struggling to find their next generation of donors.
22 And we helped them understand how to use YouTube. And so
23 when we can do work that helps -- whether it's St. Jude or
24 General Motors -- and really see the impact of the work,
25 that's created meaning for me in what I do.

Cross-Examination - A. Stewart

1 MS. SESSIONS: Thank you, Mr. Stewart.

2 I pass the witness.

3 THE COURT: Go ahead.

4 MR. TESLICKO: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. TESLICKO:

7 Q Good afternoon, Mr. Stewart. My name is David
8 Teslicko. I'm an attorney for the Department of Justice.

9 Mr. Stewart, just to clarify, you are part of the sales
10 organization at Google, correct?

11 A That's correct.

12 Q You ultimately report up to Philipp Schindler, Google's
13 chief business officer?

14 A I do.

15 Q And you're not part of the ads product management group
16 at Google, right?

17 A I'm not.

18 Q And you're also not part of the ads engineering group
19 at Google, correct?

20 A I'm not.

21 Q And you mentioned you primarily work with advertisers,
22 right?

23 A That's correct.

24 Q Not website publishers?

25 A No.

Cross-Examination - A. Stewart

1 Q Okay. And just to clarify, which products does your
2 team sell?

3 A We sell across Google's ad products. So search,
4 display, DV360, YouTube.

5 Q And your team does not sell, for example, the DFP
6 publisher ad server, right?

7 A No.

8 Q Your team does not sell the AdX ad exchange?

9 A No.

10 Q Now, I think you mentioned this briefly. You
11 previously did work for a website publisher, Discovery,
12 correct?

13 A Yeah. When I worked for Discovery, it was a cable
14 channel. Websites were coming up in that era. So I was
15 there during that period.

16 Q Okay. Did Discovery have a website at the time?

17 A Towards the latter part of my tenure but not in the
18 beginning.

19 Q Okay. Based on your experience at Google, you would
20 agree with me that a website publisher can't use a tool like
21 DV360 to sell inventory on their website, right?

22 A I'm not sure I understand your question.

23 Q Sure. Can a website publisher, like Discovery now, use
24 DV360 to sell advertising?

25 A No.

Cross-Examination - A. Stewart

1 Q Okay. In your public speeches, Mr. Stewart, you often
2 talk about the importance of using the right mix of
3 advertisements, right?

4 A I do.

5 Q Okay. And that means advertisers generally should use
6 more than one form of advertising; is that right?

7 A Most advertisers do.

8 Q Would it be fair to say that for many advertisers,
9 display advertising is important to having the right mix
10 overall?

11 A For some.

12 Q For many?

13 A I would say for some.

14 Q And that's true for the LCS advertisers, the large
15 advertisers that you work with, right?

16 A Yes.

17 Q And you would agree that different forms of digital
18 advertising can have different reach?

19 A Yes.

20 Q For example, you're involved in advertising sales for
21 YouTube, right?

22 A I am.

23 Q Not everyone uses YouTube?

24 A No.

25 Q So an advertiser that buys on YouTube might also buy

Cross-Examination - A. Stewart

1 display ads on the open web to reach additional Internet
2 users, right?

3 A Yes.

4 Q Different forms of advertising can also impact Internet
5 users differently; is that fair?

6 A I'm not sure what you mean by impact.

7 Q Sure. We'll go to an example. For example, Google
8 markets video ads, in part, because they typically have
9 sound on and they play automatically when an Internet user
10 visits the website, right?

11 A Yes.

12 Q And by contrast, display ads normally have sound off,
13 right?

14 A To clarify though, not all video ads have sound on on
15 load.

16 Q Okay. Let's focus on in-stream video ads. Do
17 in-stream video ads typically have sound on?

18 A On YouTube, yes.

19 Q And by contrast, you would agree that display ads
20 typically have sound off?

21 A I can't say that with certainty. There's a lot of use
22 cases.

23 Q Now, Google also markets itself as providing a full
24 funnel solution; is that right?

25 A Yes.

Cross-Examination - A. Stewart

1 Q And the funnel refers to advertising that targets
2 consumers in different ways -- right?

3 A That's correct.

4 Q -- at different points in their decision-making
5 process?

6 A That's correct.

7 Q And you'd agree with me that certain types of
8 advertising, like search, are generally thought of as lower
9 funnel advertisements, right?

10 A For some.

11 Q And other types of advertising, such as display
12 advertising, can be better suited toward upper funnel brand
13 awareness campaigns?

14 A For some.

15 Q Now, on direct, you testified about the importance of
16 measurement to advertisers. Do you remember that testimony?

17 A I do.

18 Q What exactly did you mean by measurement?

19 A What I meant by measurement were in the example that I
20 gave, which was of an MMN. The ability to measure the
21 impact of the advertising that you're doing across channels,
22 across partners to understand how effective that is in terms
23 of generating your return on ad spend.

24 Q And what type of data does Google use to measure
25 attribution for advertisers in connection with MMNs?

Cross-Examination - A. Stewart

1 A I'm not an expert in attribution, but Google provides
2 data. To answer the latter part of your question, Google
3 and other providers, Meta and others, provide data to MMNs
4 who are third parties for the MMNs to apply the measurement.

5 Q You talked about Google Ads on your direct; is that
6 right?

7 A I did.

8 Q And Google Ads provides measurements along the lines of
9 conversions and attributions, correct?

10 A Yes.

11 Q Where does the data come from that Google uses to
12 measure attributions or conversions on Google Ads?

13 MS. SESSIONS: I object as to outside the scope,
14 and I object on foundation grounds.

15 MR. TESLICKO: Your Honor, I could ask if he knows
16 this, but he did testify about the importance of measurement
17 on Google Ads.

18 THE COURT: Go ahead and ask your foundation.

19 BY MR. TESLICKO:

20 Q Mr. Stewart, do you have a general understanding of
21 where the data comes from that Google Ads uses to provide
22 measurement that you said was important to advertisers?

23 A For Google Ads? For which part of Google Ads?

24 Q Let's focus on Google Ads display advertisement earning
25 returns on Google Ads.

Cross-Examination - A. Stewart

1 A A general understanding.

2 Q Okay. And where does the data come from that Google
3 uses to track measurement for a display campaign on Google
4 Ads?

5 A I'm just not an expert in this area of the exact
6 sources of data that are going to provide that measurement.

7 Q Do you have any general understanding about the sources
8 Google uses to track measurement on Google Ads?

9 A There are clicks on those ads.

10 Q Do you know if Google uses data from its various other
11 services to track measurement of the performance of ad
12 campaigns on Google Ads?

13 A I'm not sure what you mean by your question.

14 Q Sure. Does Google use any data from its logged-in
15 services on Google search or YouTube or Gmail to track
16 measurement of Google Ads' campaigns?

17 A You're asking specifically if logged-in users -- if
18 that data is used to track or to measure. Again, I'm not an
19 expert on how logged-in data is used. So I assume it plays
20 a role, but I can't be specific on it.

21 Q Okay. Do you know if Google shares that data with any
22 other ad tech entities?

23 MS. SESSIONS: Again, Your Honor, he just said he
24 doesn't know.

25 THE COURT: Well, this is a different question.

Cross-Examination - A. Stewart

1 This is about sharing.

2 MS. SESSIONS: Okay. If we could be more specific
3 then about what data is being asked in the question.

4 THE COURT: All right. Logged-in data, correct?
5 BY MR. TESLICKO:

6 Q Sure. Does Google share any data associated with its
7 logged-in services with other ad tech companies?

8 A No.

9 Q Okay. Now, you mentioned, Mr. Stewart, that you and
10 your team are responsible for selling both Google's
11 advertising -- both of Google's advertising buying tools,
12 DV360 and Google Ads, right?

13 A That's correct.

14 Q And you'd agree that those are different products?

15 A Google Ads and DV360 are different buying doors to buy
16 ads.

17 Q Uh-huh. And you mentioned on direct that several
18 advertisers use both DV360 and Google Ads when we're talking
19 about the large advertisers you work with, right?

20 A I only work with large advertisers.

21 Q So the answer is for the large advertisers you work
22 with, many do use both Google Ads and DV360?

23 A Some do.

24 Q Some do. Okay.

25 If you could, turn in your binder to what's marked --

Cross-Examination - A. Stewart

1 the tab that's marked DTX 1514.

2 THE COURT: Are you moving that in?

3 MR. TESLICKO: Yes, Your Honor.

4 THE COURT: Any objection?

5 MS. SESSIONS: No, Your Honor.

6 THE COURT: All right. It's in.

7 BY MR. TESLICKO:

8 Q Now, if we look at the title of -- the title slide of
9 this presentation, it says, "Learn with ASAP, Google
10 Marketing Platform Foundations."

11 Do you see that?

12 A I do.

13 Q And Google marketing platform, is that what you and
14 your team sell?

15 A DV360 is part of Google marketing platform.

16 Q Sure. And if we go to page 52 of the exhibit -- and
17 the page numbers are at the bottom of the DTX exhibits --
18 this slide shows that DV360 and Google differ in a number of
19 ways, right?

20 A Yes.

21 Q And in particular, this slide calls out that Google Ads
22 and Display & Video 360 have different fee structures,
23 correct?

24 A That's correct.

25 Q And they also have different measurement and tracking

Cross-Examination - A. Stewart

1 capabilities based on this slide, right?

2 A That's correct.

3 Q And if you look down at management, DV360 typically
4 requires a trading desk, agency, or in-house team of
5 professionals to manage DV360, right?

6 A I see that.

7 Q And that's correct, right?

8 A Yes.

9 Q By contrast, Google Ads does not require a management
10 team of the type required by DV360?

11 A That's correct.

12 Q And you'd agree that Google markets the two tools to
13 different types of advertiser clients, right?

14 A No.

15 Q Okay. DV360 is generally for enterprise-level clients,
16 such as ad agencies and large marketing organizations,
17 correct?

18 A That's correct.

19 Q And DV360 is better for clients that want more control
20 and customization in executing their media buys, right?

21 A There's control and customization available through
22 both buying doors.

23 Q You would agree there's more control and customization
24 for DV360 versus Google Ads, right?

25 A Yes.

Cross-Examination - A. Stewart

1 Q And DV360 is better for advertisers who want to
2 integrate with third-party tools, right?

3 A That's correct.

4 Q And that includes third-party exchanges?

5 A I'm not sure what you mean by third-party exchanges.

6 Q Non-Google exchanges, non-Google ad exchanges?

7 A Yes.

8 Q And that's also true for third-party measurement and
9 targeting tools, right?

10 A Not exclusively true, no. Because certain -- there are
11 third-party measurement tools. There can be different
12 integrations with them. Some are available to one. Some
13 are available to the other. Some are available to both.

14 Q Okay. Are there any measurement tools or targeting
15 tools available only to DV360 customers versus Google Ads
16 customers?

17 A I'm not sure.

18 Q Okay. If we could, turn to Slide 57.

19 Now, this slide reflects Google's sales strategy to
20 sell Google Ads as a complementary tool to clients already
21 using DV360, right?

22 A It does.

23 Q Okay. And features of DV360 that are listed on this
24 slide include some of the ones we just talked about, right?

25 A That's correct.

Cross-Examination - A. Stewart

1 Q And looking at the very first items in features, in the
2 section called features of DV360, it highlights one of those
3 features below the cross-channel media buying section as,
4 "Including access to 3rd Party exchanges."

5 Do you see that?

6 A I do.

7 Q And Google markets DV360 -- one of the features of
8 DV360 that Google markets is integration with third-party ad
9 exchanges, right?

10 A Yes.

11 Q Okay. And on the box to the right, there's a section
12 called Google Ads. Do you see that?

13 A I do.

14 Q And these are distinct features of Google Ads as
15 compared to DV360, right?

16 A That's correct.

17 Q Okay. And if you flip to page 58 -- it's the next
18 page -- this is kind of the flip side of the slide we just
19 looked at, right? This is Google's sales strategy to sell
20 DV360 to certain Google Ads customers, right?

21 A Yes.

22 Q And if you look, again, at the cross-channel campaigns
23 box in the Google Ads features section of this slide, it
24 talks about optimizing spend across a O&O and display
25 networks.

Cross-Examination - A. Stewart

1 Do you see that?

2 A I do.

3 Q And O&O means Google owned-and-operated properties,
4 right?

5 A That's correct.

6 Q And display network is Google's network of partners,
7 correct?

8 A Yes.

9 Q There's no mention on this slide about access to
10 third-party exchanges or non-Google ad exchanges, right?

11 A No.

12 Q If you could, put that document to the side.

13 Now, on direct, Mr. Stewart, you talked about
14 DemandGen. Do you remember that?

15 A I do.

16 Q Where does DemandGen allow advertisers to run
17 advertising?

18 A Within the areas that I talked about, the Google feed
19 surfaces.

20 Q And just to clarify, on your direct, you didn't mention
21 that DemandGen runs ads on third-party open-web websites; is
22 that right?

23 A That's correct.

24 Q Okay. So an advertiser using DemandGen can't place a
25 display ad on washingtonpost.com, for example?

Cross-Examination - A. Stewart

1 A No.

2 Q Okay. And Google developed DemandGen to target
3 advertisers that were buying media -- advertising on social
4 media websites, right?

5 A I can't speak to the origin of the product.

6 Q But you were -- you were involved in selling the
7 DemandGen product, right?

8 A Yes.

9 Q And you were around and part of the business when
10 DemandGen was created as a product?

11 A Yes.

12 Q Based on your understanding of the product, was it
13 originally developed, in part, to sell to advertisers that
14 were advertising on social media websites?

15 A Yes.

16 Q Okay. Now, have you ever heard of the concept of
17 demand fulfillment?

18 A No.

19 Q Okay. I'll skip that.

20 Now, if we could pull up the demonstrative that you
21 used during your testimony --

22 And I don't know if I need Mr. Spalding's help for
23 this.

24 So if we tick through these a bit in turn. Just to
25 clarify, DemandGen and Discover, this is an ad that's

Cross-Examination - A. Stewart

1 showing on a Google surface, right, a Google
2 owned-and-operated property?

3 A That's correct.

4 Q Okay. And the tool that advertisers have to use to
5 place a DemandGen advertisement like this is Google Ads,
6 right?

7 A That's correct.

8 Q Okay. And if we look at the middle section, which is
9 Instagram, what tool is used to sell advertising like this
10 one on Instagram?

11 A Facebook's tool.

12 Q Okay. An advertiser can't use DV360 or Google Ads to
13 place the ad shown in the middle of this slide on Instagram,
14 right?

15 A They cannot.

16 Q Okay. And then looking over to the right, just to
17 clarify, this is showing *The Washington Post* app, right?

18 A Yes.

19 Q Not the mobile website for the *Washington Post*?

20 A I believe so.

21 Q If we could, pull up DTX 486, which you were shown on
22 direct, and go to page 4. It's going to be back in the
23 black binder that you had, or we will put it up on the
24 screen.

25 A Where is it in the binder?

Cross-Examination - A. Stewart

1 Q DTX 486. It's also on the screen.

2 A I'll use the screen.

3 Q Okay. And I wanted to direct your attention to the
4 Note 1 at the bottom of this slide that I don't think you
5 read before. It says, "Here and throughout this document
6 GDN is defined solely as GDN sales, i.e., does not include
7 video sold via AdWords."

8 Do you see that?

9 A I do.

10 Q And that means that any video ads are not included in
11 the figures reported here?

12 A Not that I'm aware of.

13 Q Okay. And this is an indication of Google separately
14 tracking video ad sales on Google Ads from other types of
15 display advertising, right?

16 A In this document.

17 Q Okay. And then also on that same slide, staying there,
18 you were shown a statistic in the second bullet of the
19 second section about dual platform use. Do you see that?

20 A I do.

21 Q And there's a reference here to this statistic relating
22 to LCS accounts. Do you see that?

23 A I do.

24 Q Can you just clarify what is an LCS account?

25 A Large customer sales.

Cross-Examination - A. Stewart

1 Q And those are the customers that you work with, right?

2 A They are.

3 Q What makes somebody a large customer for purposes of
4 qualifying as an LCS account?

5 A Generally, a threshold of spend coupled with other
6 aspects, like the sophistication and needs of the marketer.

7 Q Roughly, how much does an advertiser need to spend to
8 be an LCS account?

9 A Roughly, \$25 million to \$30 million annually.

10 Q And you have no reason to believe that the statistics
11 shown on this slide would apply to non-LCS accounts, right?

12 A I don't know that.

13 Q Okay. If we can go to page 7, I just want to clarify
14 one thing on here. You were shown this slide earlier, and
15 this reported --

16 A Sorry. It's hard to see.

17 MR. TESLICKO: Yeah, if we could, zoom in a
18 little.

19 BY MR. TESLICKO:

20 Q -- the percent of clients that represent revenue. If
21 we look at the client's column here, it says "N = 1,175."
22 What does that mean?

23 A I'm assuming that's a reference to the number of
24 clients that were included in this data.

25 Q And you're aware that well over 1,175 advertisers use

Cross-Examination - A. Stewart

1 GDN, right?

2 A Yes.

3 Q Is this limited to LCS advertisers or some other
4 limitation?

5 A This would be an LCS representation.

6 Q Okay. I ask that just to clarify. This statistic is
7 not reporting on the concentration of Google Ads' customers
8 overall in terms of their relative share of revenue, right?

9 A This is a discussion -- it's a document from a
10 discussion with LCS.

11 Q I'm sorry. I want to go back to page 4. I missed one
12 question there. If we can, go back to Slide 4.

13 You were asked questions about the very first bullet
14 here which talked about significant competition, primarily
15 from Facebook, Criteo, and Amazon. Do you remember that?

16 A I do.

17 Q And you're aware that Facebook exited the market for
18 open-web display advertising sales after this deck was
19 created, right?

20 A I don't know the sequence of when they entered or
21 exited the market.

22 Q You're aware that Facebook does not sell open-web
23 display advertising today, right?

24 A They have an external app business, so a network. But
25 I am aware of what you're speaking to.

Cross-Examination - A. Stewart

1 Q Okay. And just to be clear, when we're talking about
2 competition here, Facebook, Criteo, Amazon, none of them
3 offer an ad exchange to your knowledge, right?

4 A Not that I'm aware of.

5 Q Okay. And you'd agree that Criteo is a highly
6 specialized advertiser ad network?

7 A Not necessarily.

8 Q You're aware that Criteo buys particular types of ads
9 on the open-web?

10 A I don't follow all of Criteo's business.

11 Q Do you have a general sense that Criteo has a
12 specialized business with respect to the types of ads that
13 it purchases?

14 A I can't speak to that.

15 Q Okay. You were earlier asked about smaller advertisers
16 that buy in some manner through DV360. Do you remember that
17 discussion?

18 A I do.

19 Q When you were talking about smaller advertisers, what
20 size advertisers were you referring to?

21 A I think in the examples that I gave I was talking about
22 franchisees of quick-serve restaurants. I was talking about
23 automotive dealer groups. So that's the level that I'm
24 talking about.

25 Q Just to clarify your testimony on direct, when those

Cross-Examination - A. Stewart

1 smaller franchisees or automotive dealers are buying on
2 DV360, are they buying through an agency or a group of
3 franchises or dealerships?

4 A Yes, in some cases.

5 Q They're not individually going out and buying
6 advertising on DV360, correct? Let me ask a better
7 question.

8 An individual automobile dealership does not have its
9 own account on DV360, right?

10 A Not that I'm aware of.

11 Q The same thing with a one-off or a small number of
12 franchisees. What you were describing on direct is not that
13 a franchisee has their own DV360 account that they can use
14 to buy online advertising?

15 A I don't know that.

16 Q And based on your knowledge of DV360, what is the --
17 when you were talking about smaller customers that buy on
18 DV360, approximately how much ad spend is purchased by a
19 smaller customer of the type you were describing?

20 A I don't have that data.

21 Q Do you have a rough ballpark?

22 A I don't.

23 Q On your direct testimony, you brought up Walmart
24 Connect. Do you remember that discussion?

25 A I do.

Cross-Examination - A. Stewart

1 Q Does Walmart Connect have its own DSP?

2 A Walmart has a DSP that's powered by The Trade Desk.

3 Q And by that, you mean they're using The Trade Desk
4 technology to operate a DSP?

5 A I believe so.

6 Q Throughout your testimony today, you've talked about
7 LCS clients, smaller clients, and torso clients. As part of
8 your role at Google, you separately track LCS clients, torso
9 clients, and smaller clients, right?

10 A Can you clarify within LCS?

11 Q Sure. Within Google, does Google separately track LCS,
12 torso clients, and smaller advertising clients?

13 A I don't think I can speak to the broader segmentation
14 of Google's customers.

15 Q And then the last document I want to go to -- I just
16 want to pull up DTX 1132. And if we can, go to page 9 of
17 this deck. This is the ALCS planning deck. And you were
18 shown this slide on direct. Do you remember that?

19 A I do.

20 Q At the very top of this slide, it says, "Our market
21 position remains strong."

22 Do you see that?

23 A I do.

24 Q That's referring to Google's market position, right?

25 A That's what it says on this slide.

Redirect Examination - A. Stewart

1 Q And just looking at the box below it, for Amazon, which
2 is in the middle box, it says, "Amazon's strength in Search
3 Ads indicates they are taking market share."

4 Do you see that?

5 A I do.

6 Q And if we look at the graph below, it's comparing
7 Amazon, Microsoft search, and Google search, right?

8 A Yes.

9 Q This is not reporting display advertising spend, right?

10 A I'm not sure. I believe it's a representation of
11 search.

12 MR. TESLICKO: No further questions, Your Honor.

13 THE COURT: All right. Any redirect?

14 MS. SESSIONS: Yes, briefly, Your Honor.

15 REDIRECT EXAMINATION

16 BY MS. SESSIONS:

17 Q Mr. Stewart, could you go back in the white binder to
18 DTX 1514, please. This is the Google marketing platform
19 document you discussed on cross.

20 A Yes.

21 Q Could you please turn to page 43. Mr. Stewart, you can
22 maybe see it on the screen.

23 Could you read the speaker notes under the platform
24 value props slide here?

25 A Sure. "Now that I've told you how similar Google Ads

Redirect Examination - A. Stewart

1 and DV360 are -- why would someone use one or the other?
2 Both? Like so many situations, it totally depends on a
3 variety of factors, including client preference. There is
4 no set formula but I'll attempt to overview how we think
5 about it as sellers and how clients may think about it."

6 Q Do you agree that whether a customer would use Google
7 Ads, DV360, or both depends on a variety of factors,
8 including client preference?

9 A Yes.

10 Q Do you agree that there's no set formula for whether a
11 client would use Google Ads, DV360, or both?

12 A Yes.

13 Q Okay. If you could, go to page 51 of this document,
14 please.

15 What stages of the funnel, at least according to this
16 slide, does DV360 offer advertising for?

17 A From the top of the funnel to the bottom of the funnel,
18 awareness to conversion.

19 Q Could you turn to page 74, please.

20 And this page shows a Google Ads versus Google
21 marketing platform product mapping, right?

22 A That's correct.

23 Q Do Google Ads and the Google marketing platform share
24 certain common features?

25 A They do.

Redirect Examination - A. Stewart

1 Q Are many of them listed here?

2 A They are.

3 Q All right. You can put that document aside.

4 Mr. Stewart, you were asked some questions about the
5 description of competition with Facebook, and then you were
6 asked whether Facebook exited the open-web display business.
7 Do you recall that?

8 A Yes.

9 Q Okay. If you could, now turn to page 11 in the black
10 binder -- or Tab 11 in the black binder, please.

11 THE COURT: What page?

12 MS. SESSIONS: I'm going to just ask Mr. Stewart,
13 first, if he recognizes this document which has been marked
14 as Defense Exhibit 494.

15 THE WITNESS: I do.

16 BY MS. SESSIONS:

17 Q Okay. What is it?

18 A Competitive analysis from November of '17 looking at
19 case studies between Facebook and Google.

20 Q And was this competitive analysis prepared in the
21 ordinary course of Google's business?

22 A Yes.

23 Q And this competitive analysis is from -- I think you
24 said 2017.

25 A Correct.

Redirect Examination - A. Stewart

1 Q And is that a similar time period to the document that
2 you were discussing with my colleague on cross-examination?

3 A I'm sorry. Which document?

4 Q We can go back to it if I can find it.

5 The one at Tab 5, which is DTX 486.

6 A Yes.

7 Q What's the date of this document?

8 A This is November of '17.

9 Q Okay. And so you recall when being asked about that
10 document, you were asked whether Facebook had exited the
11 open-web display --

12 A I recall the question.

13 Q Okay. Now, if you can, turn back to Tab 11, Defense
14 Exhibit 494.

15 THE COURT: Are you moving that in?

16 MS. SESSIONS: I will, Your Honor, yes.

17 MR. TESLICKO: I just don't think counsel has laid
18 a foundation about Mr. Stewart's connection with this
19 document, if any.

20 MS. SESSIONS: Your Honor, he testified it was a
21 competitive analysis prepared in the ordinary course of
22 business, and this is now being offered to show the way in
23 which Google was thinking about competition with Facebook at
24 the very same time.

25 THE COURT: I'm permitting it.

Redirect Examination - A. Stewart

1 MS. SESSIONS: Thank you, Your Honor.

2 BY MS. SESSIONS:

3 Q Mr. Stewart, just quickly on this document, does -- is
4 this document analyzing competition with Facebook for -- in
5 tools to purchase open-web display advertising?

6 MR. TESLICKO: Objection, Your Honor. Leading.

7 THE COURT: Sustained.

8 BY MS. SESSIONS:

9 Q Okay. What Facebook products are being assessed in the
10 document at Tab 11?

11 THE COURT: The witness shouldn't have to sit here
12 and read this. Is there a page you want him to look at?

13 MS. SESSIONS: Sure, Your Honor.

14 BY MS. SESSIONS:

15 Q If you go to page 7 --

16 A Yes.

17 Q -- Mr. Stewart, what Facebook product is being -- oh,
18 this is page 4 of the one that you are looking at. Sorry.
19 There we go.

20 What Facebook product is being analyzed on this page?

21 A We are looking at Instagram. We're looking at the
22 Facebook page, and we're looking at what looks like a
23 third-party page in Hubble.

24 Q So the ads shown on Facebook and Instagram properties?

25 A I believe so.

Direct Examination - A. Borgia

1 Q Okay. You can put that document aside.

2 MS. SESSIONS: No further questions, Your Honor.

3 THE COURT: Any recross?

4 MR. TESLICKO: No recross, Your Honor.

5 THE COURT: I assume since we're getting so late
6 in the trial that Mr. Stewart will not be called again.

7 MS. SESSIONS: That's correct.

8 MR. TESLICKO: Not by us.

9 THE COURT: All right. Mr. Stewart, then you're
10 excused as a witness. That means you can stay in court and
11 watch the proceedings or leave, but you're not to discuss
12 your testimony with any witness who has not yet testified.

13 THE WITNESS: I understand. Thank you, Your
14 Honor.

15 THE COURT: Since we've been in session for two
16 hours, I do want to give the staff a chance to take a break.
17 All right. We'll probably have one more short break before
18 6:00.

19 All right. We're at 15 minutes. So be back at
20 3:15.

21 (Brief recess taken.)

22 THE COURT: All right. Your next witness.

23 MS. MORGAN: Yes. Google calls Alejandro Borgia.

24 THE COURT: All right. You may proceed.

25 MS. MORGAN: Good afternoon, Your Honor.

Direct Examination - A. Borgia

1 ALEJANDRO BORGIA, DEFENDANT'S WITNESS, SWORN

2 DIRECT EXAMINATION

3 BY MS. MORGAN:

4 Q Good afternoon, Mr. Borgia.

5 A Good afternoon.

6 Q Please introduce yourself and spell your name for the
7 court reporter.

8 A Hi. I'm Alejandro Borgia, A-L-E-J-A-N-D-R-O. Last
9 name is B-O-R-G-I-A.

10 THE COURT: I'm not sure we're going to need the
11 microphone for you. On a gray afternoon, probably it's
12 good, but let's see.

13 MS. MORGAN: I told you to speak up, and you're
14 doing great.

15 BY MS. MORGAN:

16 Q Where do you work, Mr. Borgia?

17 A At Google.

18 Q And what has been your title at Google?

19 A I've been director of product management leading the
20 AdSafety team.

21 Q Okay. How long have you worked for Google?

22 A It's been about four-and-a-half years.

23 Q And while you've been at Google, have you always been
24 on the AdSafety team?

25 A Yes.

Direct Examination - A. Borgia

1 Q Is the AdSafety team part of the ads privacy and safety
2 group?

3 A Yes.

4 Q Okay. We'll just briefly show you Borgia Demonstrative
5 No. 2.

6 MS. MORGAN: If we can, show that.

7 BY MS. MORGAN:

8 Q What is this chart showing?

9 A This shows an organizational chart of the ads privacy
10 and safety team, and you can see AdSafety right in the
11 middle.

12 Q Okay. I just want to focus on two of these little
13 boxes at the bottom, AdSafety and Ads Traffic Quality or
14 AdSpam.

15 How are those two groups different?

16 A They are very different. AdSpam deals specifically
17 with invalid traffic, which is mostly when a user is not
18 actually looking at an ad. AdSafety deals with all other
19 aspects of safety, which includes the ad itself and the
20 content that the ad is placed next to involving safety for
21 the user, the advertiser, and the publisher.

22 Q Are you familiar with a Google employee named Per
23 Bjorke?

24 A Yes. He's a colleague of mine on the AdSpam team.
25 We're on partner teams, but we work in different areas.

Direct Examination - A. Borgia

1 Q We can take that down.

2 And I want to now ask you specifically about your work
3 in AdSafety. What's the goal of the AdSafety team?

4 A The goal of the AdSafety team is to keep the ads
5 ecosystem safe. In order for Google to function and to
6 complete the mission of enabling universal access of
7 information, you need an ads ecosystem that is safe and
8 trustworthy. When a user interacts with an ad, if they are
9 in any way harmed, they will not want to interact with ads
10 again.

11 It would be the equivalent of walking into a grocery
12 store and being mugged on the way. You're not going to want
13 to go back to that store. So if an ad harms a user, they
14 will not interact with ads in the future. That's why Google
15 invests so much to make ads safe.

16 Q So you've talked a little bit about how users benefit
17 from an ad safe ecosystem. How do advertisers benefit from
18 the safety in the ecosystem, if at all?

19 A It's also critical for advertisers. Advertisers are
20 looking to get a return on their investment. And if the ads
21 ecosystem is unsafe, if users are unwilling to click on
22 their ads, then advertisers are unable to reach the users
23 that they wish to reach, and their ROI goes down.

24 Q What about publishers? Do publishers benefit from a
25 safe ecosystem?

Direct Examination - A. Borgia

1 A Absolutely. Publishers and advertisers are partners in
2 this equation. And if an advertiser is unable to get a
3 return on their investment, then the publisher is not going
4 to be able to monetize their site successfully. So they
5 won't be able to make the content that they're making.

6 Q Is part of your job to manage the quality of the match
7 between an advertiser and a publisher?

8 A Yes, absolutely. So there's a huge range of what
9 safety implies, everything from the ad not having harmful
10 content to not creating a problem where they actually steal
11 from users. But they're also important cases of pairings
12 between ads and content.

13 As a simple example, imagine if you were looking at an
14 article reporting on a plane crash and you were to see an ad
15 for an airline next to that article. That would be an
16 unpleasant experience for the user. It would be an
17 unrewarding experience for the advertiser and the publisher.

18 Q You mentioned a couple of different types of safety
19 threats with ads. What are some examples of threats that
20 bad ads post?

21 A So there's a broad range, everything from seeing
22 harmful content that could be offensive conduct or
23 distasteful images. It could be misleading content,
24 misleading claims, or unreliable claims, such as a
25 get-rich-quick scheme or an ad that promises that you'll

Direct Examination - A. Borgia

1 lose a certain amount of weight in a certain amount of time.
2 Those are unrealistic claims. Or they could be potentially
3 outright scams where they're out to steal your money or
4 potentially even malware where they will install malicious
5 software on your machine to steal your banking log-ins or
6 any other credentials or information they would want to
7 steal.

8 Q So those are some threats that come from ads.

9 Do you deal also with safety and quality issues on the
10 publisher's side?

11 A Yes. And in fact, again, they're two sides of the same
12 coin. Many times ads point to publisher sites, and we need
13 to make sure that the publisher site is safe. And also,
14 when you place an ad next to content, the site itself might
15 have harmful content or might be initiating a download in
16 the background that can harm your machine. So the publisher
17 has just as many risks as the advertiser.

18 Q So why does your team work on policies for both
19 advertisers and publishers rather than focusing on one or
20 the other?

21 A Because, again, they're two sides of the same coin and
22 the visibility that we have by seeing both sides enables us
23 to make the ecosystem safer.

24 So, for example, an ad that points to a website, that
25 website is content that we're reviewing. And by having the

Direct Examination - A. Borgia

1 same underlying content understanding technologies, we're
2 able to achieve the scale that is necessary to stay ahead of
3 advanced attackers.

4 Q Which ad tech tools do Google's safety policies apply
5 to?

6 A They apply to all of them. That includes products like
7 Google Ads, DV360, AdSense, AdMob, GAM, and so forth.

8 Q To what extent, if any, is it easier for your team to
9 serve advertisers and publishers because Google has an
10 integrated end-to-end stack?

11 A It makes it a lot easier for us to deliver the safety
12 that's required to keep the ecosystem safe.

13 Q Before an advertiser uses one of Google's platforms, is
14 there a screening process they have to go through to sign up
15 to use Google's tools?

16 THE COURT: Now, some of this is cumulative.

17 MS. MORGAN: I am going to focus only on aspects
18 that weren't covered yesterday, Your Honor.

19 THE COURT: All right.

20 THE WITNESS: So yes, there is a detailed
21 verification process that goes on as the advertiser starts
22 to use the Google system, as well as throughout the process
23 as they change over time what they do in the ecosystem. And
24 that process varies depending on what the advertiser is
25 seeking to do, how detailed we go in terms of verification

Direct Examination - A. Borgia

1 processes and even certifications.

2 BY MS. MORGAN:

3 Q And which of Google's advertising tools requires this
4 process?

5 A All of them.

6 Q How many advertisers are prevented from using Google's
7 buying tools as a result of the screening on the advertiser
8 side?

9 A Because there's so many scammers out there, it's every
10 year millions of advertisers that we are blocking from using
11 the ad systems when they demonstrate malicious intent.

12 Q Okay. I'd now like to introduce Defense Trial
13 Exhibit 1186 if you want to look at that in your binder.

14 THE COURT: Any objection to 1186?

15 MR. FREEMAN: No objection, Your Honor.

16 THE COURT: All right. It's in.

17 MS. MORGAN: Great.

18 BY MS. MORGAN:

19 Q What is this document?

20 A So this is the AdSafety report companion document. It
21 was a presentation that I delivered jointly with Dan Taylor
22 to various members of the media to explain our annual
23 AdSafety report.

24 Q And what is the AdSafety report?

25 A So every year we publish a report giving transparency

Direct Examination - A. Borgia

1 about the efficacy of our systems, how we perform in
2 enforcing, and also providing a breakdown of the threats
3 that we see on the Internet so that users, advertisers, and
4 publishers can be more informed at the risks that are on the
5 ecosystem.

6 Q Okay. I'm going to direct your attention to Slide 3.
7 What does this slide show?

8 A This is effectively like a 100,000-foot view that we
9 gave to the media to explain how we deliver safety on our
10 platforms. We cover policy, enforcement, and transparency,
11 three key parts of that puzzle.

12 Q Okay. Let's walk through each one of the topics.
13 So let's start with safety policies. What kind of
14 policies does Google have?

15 A So we have hundreds of policies that apply to
16 advertisers and to publishers alike. They generally fall
17 into a few big buckets. There are content policies that
18 refer to what's actually displayed in an ad or on a website,
19 and that content might be nefarious, harmful, distasteful,
20 objectionable. There's any of a variety of threats that can
21 happen. So we have policies for all of these to ensure that
22 we're keeping the ecosystem safe. And those policies are
23 published on our website so that all can understand
24 transparently what it is that we are enforcing against.

25 Q Okay. And who do the policies apply to?

Direct Examination - A. Borgia

1 A To all advertiser and all publishers that interact with
2 our systems.

3 Q How often does Google update its safety policies, if
4 ever?

5 A We are always updating our policies because the threats
6 on the Internet emerge -- are always evolving. And so every
7 year we make about 30 or so changes.

8 Q Let's go back to this page and talk about the middle
9 column, enforcement. What does enforcement refer to?

10 A So enforcement refers to how we make sure that our
11 policies are adhered to. And so our policies are public,
12 but without enforcement, we can't guarantee that they're
13 actually being followed.

14 Many well-intentioned advertisers and publishers alike
15 will typically try to stay within the boundaries of policy
16 but occasionally will make a mistake. Our enforcement
17 enables us to make sure that they stay within those
18 boundaries.

19 However, nefarious actors will intentionally circumvent
20 our policies, and enforcement is critical to keeping the
21 ecosystem safe.

22 Q Okay. And what does transparency, the last column,
23 refer to?

24 A Transparency is also part of enabling trust for our
25 users, advertisers, and publishers. This is how we go about

Direct Examination - A. Borgia

1 showing accountability. We give a lot of information
2 about -- including the AdSafety report itself -- the threats
3 that are out there, how we're enforcing against them. Our
4 publication of our policies is part of transparency. And
5 even our Ads Transparency Center gives plenty of information
6 so that all can understand how we're keeping the ecosystem
7 safe.

8 Q Okay. Now, I want to direct your attention to page 10.

9 Which one of those three buckets does this slide fall
10 into, policy, enforcement, or transparency?

11 A This is an overview of enforcement.

12 Q Okay. So what's shown on this slide?

13 A This is basically saying that as we see new threats
14 emerge on the Internet, we get feedback and notices from a
15 variety of sources. It could be users. It could be
16 government agencies. It could be third-party threat intel
17 feeds. All of these give us information as to the latest
18 threats that are emerging, and we use that information to
19 train our machine learning so that we can enforce its scale.

20 Then, of course, we use trained reviewers to check and
21 make sure that our systems are working as expected. And
22 whenever there is a miss, we feed that back into our machine
23 learning so we can continually improve.

24 Q Okay. Now I'm going to direct your attention to
25 Slide 11. This slide is called implementing checks and

Direct Examination - A. Borgia

1 controls. Can you walk us through the advertiser checks and
2 controls that are listed here?

3 A Sure. So if an advertiser wants to advertise through
4 Google, they will create a campaign and upload creatives to
5 our Google servers and ad systems. And at that point in
6 time, we go through rigorous policy checks to make sure that
7 those ads comply with all of our hundreds of policies that
8 are published on our website. And then in addition to
9 policy checks, we also have advertiser controls that enable
10 advertisers to fine-tune their settings for brand safety
11 needs.

12 Q When you say advertiser controls, what are you
13 describing?

14 A We have for both advertisers and publishers controls
15 that allow them to select where their ads appear or which
16 ads appear on their sites depending on whether it's an
17 advertiser or a publisher. So this allows them to protect
18 their brand identity above and beyond the checks that are
19 related to policy.

20 Q Okay. And when does Google actually go through the
21 process of screening ads?

22 A It's continuously going through that process. So as
23 the ads are uploaded to the system -- and actually, over
24 time because many malicious actors will change the content
25 of an ad. Even after it's been submitted and it's live on a

Direct Examination - A. Borgia

1 site, they will actually change where the ad points to
2 initially making them point to simple things that are
3 innocuous. And then when they think that they can get away
4 with it, they will cloak it or change it and point to
5 something nefarious. So it's a constant check that we're
6 doing.

7 Q Okay. Below the advertiser checks and controls,
8 there's a list of publisher checks and controls. How, if at
9 all, are those different?

10 A They're very similar. It's just a mirror image. In
11 this case, the publisher would be initiating an ad request
12 to our systems or a bid request. And in that bid request,
13 it would be saying, I want to put an ad next to this
14 content. And then we would initiate the policy checks on
15 the content to make sure that that content is safe to put an
16 ad next to. That's the policy check column.

17 And then, similarly, we have controls, again, for both
18 publishers and advertisers to enable their brand safety
19 needs.

20 Q What kind of machinery do you use to manage the checks
21 and controls that you just described?

22 A Because of the scale at which we operate, which is at
23 the scale of trillions of ads, we need to use extensive
24 machine learning because there aren't enough people that we
25 could hire in the world to review all of these ads manually.

Direct Examination - A. Borgia

1 So it's extensive machine learning machinery.

2 Q Is the machine learning that you described built by
3 Google?

4 A Yes.

5 Q What other means does Google use to catch potential bad
6 actors?

7 A Well, because we're so dedicated to safety -- our
8 mission and my team is safety -- we look at any means that
9 we can. And so including the information that we have about
10 the advertiser as we're doing the verification processes and
11 even using third-party threat intelligence feeds in case
12 they might see some indicator that we're not aware of of
13 some new threat on the Internet.

14 Q What happens when a security issue is brought to
15 Google's attention?

16 A So the first thing we do -- in our language, we like to
17 stay stop the bleeding. There's a live threat out there,
18 and we need to stop it. It somehow got past our systems.
19 Our systems strive to be perfect, but they will never be
20 100 percent perfect. So occasionally, we'll have something
21 get through. So the first thing we do is we stop that ad or
22 stop that content from receiving ads.

23 And then we also say, well, is there anything like
24 that? Is this a new type of threat we haven't seen before?
25 So we do what we call a sweep. We sweep our systems to see

Direct Examination - A. Borgia

1 if there's anything similar to that harm. And then,
2 finally, we do a full feedback loop to say, okay, let's be
3 now proactive and see are there going to be new threats like
4 this coming in the future. Can we build extra checks so
5 that we will protect against this type of threat in the
6 future?

7 Q Does Google's scale benefit its ability to promote
8 AdSafety?

9 A Absolutely. Without it, it would be very difficult to
10 do our job.

11 Q To what extent, if any, does Google work with
12 third-party vendors to manage ads quality and fight bad
13 acts?

14 A Extensively. We're willing to work with anyone who
15 will augment our safety. And we do actually license threat
16 feeds, for example, from a number of vendors out in the
17 industry. Even if they give us just a little bit of extra
18 visibility, it's worth it for us to drive extra safety.

19 Q To what extent do third-party vendors do the same thing
20 that your team does?

21 A Well, they're very different. They're kind of like
22 counting instances, almost like counting crimes happening in
23 a store versus actually stopping the crime from happening.

24 Q Could the work that you do at Google be performed by a
25 third-party vendor?

Direct Examination - A. Borgia

1 A Not as effectively as we do it.

2 Q And why is that?

3 A Because we have a unique point of visibility on both
4 the ad and the content to be able to, at the time of serving
5 the ad, deliver safety.

6 Q Okay. We can take this document down.

7 And the next document I want to show you is Defense
8 Trial Exhibit 1182. So you can turn to that in your binder.

9 THE COURT: Any objection to 1182?

10 MR. FREEMAN: No objection, Your Honor.

11 THE COURT: All right. It's in.

12 BY MS. MORGAN:

13 Q What is this document?

14 A So this is our 2022 AdSafety report. Remember, a
15 moment ago I shared -- I talked about the companion
16 document, a presentation we gave to media. This is the
17 report itself publicly available on our Internet site.

18 Q Okay. How frequently do you issue these reports?

19 A We publish this every year.

20 Q I'm going to direct your attention to the second page
21 of the report, and I want to talk about what's at the very
22 top where it says, "A look back at what we did in 2022 to
23 keep our platforms safe for users, advertisers and
24 publishers."

25 Why do you start the report this way?

Direct Examination - A. Borgia

1 A Well, I think it's helpful to readers of the report to
2 understand why it is that we do the work that we do.
3 Ultimately, again, in order for Google to accomplish its
4 mission of universal access to information, we need to have
5 a safe ecosystem. And it starts with the user, keeping the
6 user safe followed by advertisers and publishers. All three
7 of those are participants in every ad transaction. There
8 are other stakeholders as well, regulators and so forth, but
9 those are the three most important that we pay attention to.

10 Q Okay. Now, I want to direct your attention to the
11 third page of the document, and I want to look at this blue
12 line chart. What is this showing?

13 A So this is a graph showing the breakdown of ads that we
14 blocked in 2022. So right above this was a 5.2 billion
15 number and then the zoomed-in version. You're looking at
16 just the chart, so 5.2 billion at the top. Ads were stopped
17 in 2022. The chart below shows the breakdown of policy
18 topics that add up to the 5.2 billion.

19 Q Okay. Does this apply to all ads or only ads on the
20 Google system?

21 A Well, this is only ads that run through Google.

22 Q Right below this on the page, there's a section called
23 "Restricted Ads." What are restricted ads?

24 A So it's easiest to understand a restricted ad in the
25 context of what a blocked ad is. So a blocked ad, which you

Direct Examination - A. Borgia

1 just saw above, is an ad that's inappropriate for any user
2 to see. It's unsafe inherently. Whereas restricted ads are
3 inappropriate for certain users to see. They might be
4 sensitive areas that have specific legal requirements and
5 different geographies, like gambling or alcohol or certain
6 financial instruments.

7 So in this case, we restrict the ads to only those
8 users or areas or geographies where they are okay to
9 present. So above and beyond the 5.2 billion bad ads that
10 we stopped entirely, we also restricted -- meaning we only
11 showed those ads in certain environments -- 4.3 billion of
12 those in 2022.

13 THE COURT: When you say environments, do you mean
14 websites or apps, or what do mean by environment?

15 THE WITNESS: All of the above. In particular,
16 often it's by geographic location where different laws
17 apply.

18 BY MS. MORGAN:

19 Q Does Google notify an advertiser when it blocks or
20 restricts an ad?

21 A Yes, absolutely. That's inherent to our transparency.
22 We need to make sure that advertisers understand when
23 they've had a policy violation. So we immediately email
24 them and also put the information in the policy center
25 indicating what ad was blocked, as well as what policy was

Direct Examination - A. Borgia

1 violated, so that they can actually fix the mistake and
2 prevent the ad from violating policy in the future.

3 Q Does Google ever suspend advertiser accounts entirely?

4 A Yes, we do. And so what I was describing just a moment
5 ago, if an advertiser has a particular ad that has a
6 problem, if that ad is a generic problem, they can fix it
7 and move on. If it's an egregious problem -- for instance,
8 actually harming the user directly -- or if there's a
9 repeated pattern of the same advertiser providing policy
10 violating ads, we will suspend the account entirely.

11 Q How many advertiser accounts were suspended in 2022?

12 A In 2022, we suspended 6.7 million advertiser accounts.

13 Q Let's go to the next page where there's another
14 chart -- this time green -- that's titled "Publisher
15 Enforcement."

16 What is this chart showing?

17 A So this is the mirror image or other side of the coin.
18 I mentioned that we have policies for advertisers and
19 publishers. This is reporting the publisher-side
20 violations. So 1.57 million pages -- meaning web pages or
21 other spots on the Internet that were requesting ads from
22 our servers -- that we stopped those locations from
23 receiving Google ads because those pages violated our
24 policies in some way. And the chart below shows the
25 breakdown of types of violations that occurred.

Direct Examination - A. Borgia

1 Q Why is action taken at a page level rather than at a
2 site level?

3 A Because most publishers are actually well-intentioned
4 and they occasionally will have a page or two or some small
5 number of pages that violate policy. And so in those cases,
6 we only want to restrict ads against those pages.

7 Now, when a publisher has more extensive or pervasive
8 violations or egregious violations, then we take action
9 against the site entirely and prevent the entire site from
10 receiving ads from Google.

11 Q Do you have an understanding of whether publishers can
12 serve advertisements from exchanges other than AdX?

13 A Yes, they certainly can.

14 Q When they do that, does Google know where the ads come
15 from?

16 A No.

17 Q So how, if at all, is your ability to enforce Google's
18 safety policies affected when the ad is served from a
19 third-party exchange?

20 A Significantly. We have much more visibility when we're
21 serving the ad.

22 Q You also said earlier that Google has visibility into
23 both the buy-side and the sell-side. Why is that
24 beneficial?

25 A Well, again, every ad transaction involves both a buyer

Direct Examination - A. Borgia

1 and a seller. And so the ad itself and the content that
2 it's next to have often very close relationships. Being
3 able to see that connection helps us to deliver safety more.

4 Q And in this document, you described the safety
5 activities that Google took over the course of a year, 2022.
6 Does Google charge extra for those safety services?

7 A No.

8 Q We can go ahead and take this document down.

9 The next document I want to show is in your binder as
10 Defense Trial Exhibit 1788.

11 THE COURT: Any objection to 1788?

12 MR. FREEMAN: We do object, Your Honor. At the
13 time that this was given to plaintiffs, they said it was a
14 demonstrative only. It was not on the exhibit list.

15 MS. MORGAN: No. It's been on the exhibit list
16 from the beginning. It's a summary exhibit, Your Honor.
17 It's a summary of the safety reports from 2020, 2021, and
18 2022, which we have for the Court and for the Department of
19 Justice.

20 MR. FREEMAN: Your Honor, I object in terms of we
21 do not have the underlying data to support this summary
22 graph and, therefore, do object to it.

23 MS. MORGAN: I just handed the data to you. It's
24 in the safety reports that are summarized. There's one in
25 2020, one in 2021, and one in 2022.

Direct Examination - A. Borgia

1 MR. FREEMAN: It's not the underlying data. It's
2 a summary.

3 THE COURT: Well, we don't have to fight about
4 this. I don't need the exhibit.

5 MS. MORGAN: That's fine.

6 Can I use it as a demonstrative, Your Honor?

7 THE COURT: Yes.

8 MS. MORGAN: Okay. Great.

9 BY MS. MORGAN:

10 Q Mr. Borgia, what does this chart show?

11 A This is simply a summary chart of three annual AdSafety
12 reports. We just talked about the 2022 AdSafety report
13 where 5.2 billion bad ads were blocked by Google. This is
14 only pulling the numbers from the prior two years of reports
15 that are similarly published on our website. In 2020, there
16 are 3.1 billion bad ads blocked by Google, and in 2021, 3.4
17 billion bad ads blocked by Google.

18 Q It looks like there's a spike in ads blocked or removed
19 between 2021 and 2022. Do you know what does that?

20 A Yes. There are a number of reasons that drive that
21 spike, but I'd say the most important are the increased use
22 of automation by attackers or adversaries that are using
23 automation tools to scale their attacks.

24 Q This ends in 2022. Do you know if this trend changed
25 in 2023?

Direct Examination - A. Borgia

1 A The trend of growth continues beyond 2022 and into
2 2023.

3 Q Based on your experience, how do you expect this trend
4 to act in the future?

5 A I expect it to continue.

6 (Mr. Freeman stands.)

7 THE COURT: Well, he answered, but I sustain the
8 objection.

9 MS. MORGAN: Okay. You can take that down.

10 Thank you.

11 BY MS. MORGAN:

12 Q Are you familiar with something called the Ads
13 Transparency Center?

14 A Yes. My team creates it.

15 Q What is the Ads Transparency Center?

16 A So the Ads Transparency Center is a site on our website
17 that anyone -- users, advertisers, publishers, regulators,
18 anyone -- can come and see information about the safety of
19 our ecosystem and also information about the ads that we're
20 placing on the ecosystem.

21 Q How, if at all, does the Ads Transparency Center make
22 Google's tools more effective?

23 A Well, it comes back to trust. For the ecosystem to
24 work, users, advertisers, and publishers need to understand
25 how we're keeping the ecosystem safe.

Direct Examination - A. Borgia

1 And in fact, advertisers who are reaching new users
2 that are unfamiliar with their brand want to have a way to
3 build trust with users. The Ads Transparency Center enables
4 that because it gives the user a visibility as to who those
5 advertisers are, where they're located, what other ads
6 they're serving, a wealth of information that can help users
7 decide whether those advertisers are trustworthy or not.

8 Q Are you able to provide information in the Ads
9 Transparency Center for all ads on the Internet?

10 A No, just the ones placed by Google.

11 Q I'd now like to show you Borgia Demonstrative No. 7,
12 and I want to talk about how the Ads Transparency Center
13 works in practice.

14 What am I looking at here?

15 A So this is a website. It's a page on the Staunton News
16 Leader.

17 Q Okay. And can you access the Ads Transparency Center
18 from this page?

19 A Yeah. So you see a banner ad at the top. There's an
20 ad with a little ad choices blue triangle in the upper right
21 that's circled in yellow. If the user were to click on
22 that, they would get a page called "about this ad" that
23 gives more information about the ad. And from there, they
24 can go straight into the Ads Transparency Center.

25 Q Okay. Let's look at Borgia Demonstrative No. 8. What

Direct Examination - A. Borgia

1 is this demonstrative showing?

2 A So this page is the page that comes up when the user
3 clicks on that blue triangle that we saw on the Staunton
4 News Leader site. So they get this page explaining -- and
5 actually, the zoomed-in version doesn't show this, but at
6 the very top, they can block the ad. They can report the ad
7 if the ad is inappropriate.

8 And then they can go and learn about the advertiser --
9 this advertiser is T-Mobile -- and where are they located.
10 And then the circle in red shows a link to see more ads that
11 this advertiser has shown using Google.

12 And below it, you see why this ad -- why was this ad
13 presented to this user in this spot. When the user clicks
14 on the "see more ads," they go straight into the Ads
15 Transparency Center.

16 Q Okay. So let's go now to Demonstrative No. 9.

17 And what is this showing?

18 A So this is inside the Ads Transparency Center, the page
19 for T-Mobile USA showing where the advertiser is, as well as
20 the other ads -- it says they're about 500 ads -- that this
21 advertiser is showing through Google. And you can actually
22 look at all of those ads, and you can filter by different
23 formats and different knobs to be able to zero in on
24 whatever ad you're interested in.

25 MS. MORGAN: We can take this down.

Direct Examination - A. Borgia

1 BY MS. MORGAN:

2 Q Does the availability of the Ads Transparency Center
3 help advertisers?

4 A Yes. Again, advertisers want to establish legitimacy
5 and trust with users. And so this is another tool that they
6 can use to demonstrate who they are, that they've been
7 verified by Google. Especially for lesser-known brands,
8 that's particularly relevant.

9 Q Does it help publishers?

10 A It also helps publishers. Every time the advertisers
11 get a better return on their investment, publishers are
12 better able to monetize their content.

13 Q And does it help users?

14 A Absolutely. Users can actually feel safer when they
15 understand who's advertising to them.

16 Q So we've talked today a lot about safety. I want to
17 briefly ask you about privacy in ads.

18 Is there a difference between privacy and safety?

19 A Yes.

20 Q What is the difference?

21 A Simply put, privacy refers to a user's information, a
22 particular user's information and keeping it safe or
23 private. Safety refers to the ad and the content that the
24 ad is next to independent of the user.

25 Q How does user information come into play in digital

Direct Examination - A. Borgia

1 advertising?

2 A Well, user information is important for presenting
3 users with relevant ads. For example, if a user were to get
4 an ad for a pizza shop that's 3,000 miles away, that
5 wouldn't be useful for them. So at the time of an ad
6 request, a publisher will send a packet of information that
7 includes information about the user, their location, their
8 language, potentially demographic information, potentially
9 other information, like unique identifiers of their machine,
10 machine IDs, IP address, even usage history. All of that
11 information can be used for positive or negative purposes.

12 Q How is user information shared?

13 A As I was beginning to mention, it's mostly shared when
14 the publisher initiates an ad request to an ad exchange or
15 an ad server. They will send a bid request or an ad
16 request. And in that request is included information about
17 the user.

18 Q And in that example you just gave, the entity sending
19 the user information is the publisher; is that right?

20 A Yes.

21 Q And it's shared with the exchange?

22 A Correct.

23 Q What are the kinds of user data that publishers share
24 in that context?

25 A It could be demographic information. It could be

Direct Examination - A. Borgia

1 unique identifiers of the machine. It could be usage
2 patterns. Frankly, it could be any information that the
3 publisher has about the user.

4 Q Does Google have limits on what kinds of user
5 information it will accept from publishers?

6 A Yes. We have strict limits published in our privacy
7 policy that outline what information from users we use. We
8 also have strict time frames of when we delete the data, and
9 we also have a center that allows a user to control which
10 information is being used. So we have strict limits on what
11 we collect, and we give the user control over that
12 information as well.

13 Q Do you know if other exchanges limit the user
14 information they will accept from publishers?

15 A We don't have direct visibility to it, so they have a
16 different approach.

17 Q If a publisher using Google's tools make a bid request
18 from a third-party exchange, does Google know what user
19 information is being shared with that third-party exchange?

20 A No.

21 Q And in that same scenario, can Google control what user
22 information is being shared with that third-party exchange?

23 A No.

24 Q Has Google taken other steps to try to give users
25 greater control of their Internet privacy?

Direct Examination - A. Borgia

1 A Yes. I mentioned that transparency and control are key
2 elements of trust. So not only are we transparent with what
3 information we collect and how we use that information, but
4 we have a My Ad Center where the user can control details
5 about how that information is used and can even turn off
6 access to that information or delete the information
7 entirely.

8 Q Why did Google create My Ad Center?

9 A Fundamentally, to increase trust. We believe that
10 transparency and control are two key elements to enable
11 users to feel more trust in the ads ecosystem.

12 Q To what extent does My Ad Center make Google's ad tech
13 tools more effective for advertisers and publishers?

14 A They also do because My Ad Center also provides
15 controls for users to specify what categories of ads they'd
16 like to see more or less of. And so if a user is saying
17 they're not interested in a particular set of products, the
18 advertiser can be wise to maximize their investment and not
19 waste advertising spend on those users. And so it helps
20 advertisers be more effective in their spend, get a better
21 ROI, which, as we talked about earlier, in turn makes
22 publishers more profitable.

23 Q I'm going to now show you Borgia Demonstrative 10.

24 What is this demonstrative showing?

25 A This is a page from the My Ad Center that I just

Direct Examination - A. Borgia

1 referred to. It's a site available on our website and
2 easily accessible from any ad displayed by Google. Shown in
3 the circle in the upper right, you see personalized ads on
4 or off. The user has the option to turn on personalization
5 entirely, in which case we do not use any information of the
6 user in order to deliver an ad. If the personalization is
7 turned on, then we can customize the experience to the user.
8 And you see below "your recent ad topics." There are a
9 variety of topics the user can choose to see more or less of
10 those ads.

11 MS. MORGAN: Let's take that down and go to Borgia
12 Demonstrative 11.

13 BY MS. MORGAN:

14 Q What is this demonstrative showing?

15 A So this is another page within the My Ad Center showing
16 additional detail beyond what was on the top front page.
17 This shows a bunch of different topics. There's an
18 extensive list of topics that the user can choose to see
19 more or less of. You also see "brands" and "sensitive" as
20 different categories. So they can choose to see more or
21 less ads of different brands. They also have sensitive
22 categories that they can choose to exclude.

23 Q Okay. And let's go to Borgia Demonstrative 12.

24 What's this page showing?

25 A This is showing the sensitive tab that I just

Direct Examination - A. Borgia

1 mentioned, and basically, there are categories, like
2 alcohol, dating, gambling. Some users might be fighting an
3 addiction problem, or for whatever reason they choose to
4 tell us, we do not want any ads in this category. And so
5 they can turn that off and make that setting apply to them.

6 Q Can users use My Ad Center when ads are not served by
7 Google's ad tech tools?

8 A It wouldn't apply to those ads. It only applies to ads
9 served by Google.

10 Q Okay. Does it apply to Google's owned-and-operated
11 properties only, like YouTube and Search?

12 A No. It applies across the board to ads served by
13 Google.

14 MS. MORGAN: Okay. We can that take demonstrative
15 back down.

16 Thanks, Matt.

17 BY MS. MORGAN:

18 Q Do you or your team have a revenue target associated
19 with your work?

20 A No, we do not.

21 Q If there's no revenue target, why does Google invest in
22 AdSafety?

23 A It goes back to what I mentioned earlier. If users
24 feel unsafe with ads, they will not click on ads. They will
25 turn on ad blockers and stay away from ads. It's like not

Cross-Examination - A. Borgia

1 going into the grocery store where you're going to get
2 mugged. So in order for Google to remain profitable and
3 continue to grow in the future, Google invests billions of
4 dollars to keep the ecosystem safe. It helps users get
5 value out of ads, advertisers get a return on their
6 investments, and publishers to make money as well. That's
7 why my team is so passionate about making the ecosystem
8 safe.

9 MS. MORGAN: I pass the witness.

10 THE COURT: All right.

11 CROSS-EXAMINATION

12 BY MR. FREEMAN:

13 Q Good afternoon.

14 A Good afternoon.

15 Q My name is Michael Freeman. I work with the Department
16 of Justice, so I have some questions for you. Okay?

17 A Pleased to meet you, Mike.

18 Q Pleased to meet you.

19 So I'd like to start with just your involvement in this
20 case. Were you aware what Google didn't disclose you as a
21 possible person who would have relevant information until
22 August 11, 2023, less than a month before the fact discovery
23 cutoff?

24 A No.

25 Q Were you aware that you were put on a litigation hold

Cross-Examination - A. Borgia

1 for this particular case not until September 20, 2023, after
2 the close of fact discovery?

3 A I was aware that I was on a litigation hold. I
4 couldn't cite the exact date.

5 Q All right. I'd like to go just a little bit into what
6 areas you don't work on as opposed to the areas you work on,
7 right.

8 So due to your job with brand safety, trust and safety,
9 that you weren't involved in the DoubleClick or AdMeld
10 acquisition, right?

11 A Correct.

12 Q You weren't involved when Google had a first look ad
13 impression coming through its publisher ad server and ad
14 exchange?

15 A We deliver safety for those impressions, yes.

16 Q But you weren't involved in terms of the auction logic,
17 what I'm referring to?

18 A Not the auction logic.

19 Q Or how a particular advertiser should bid into a
20 particular auction?

21 A No.

22 Q Were you involved in decisions about how publishers can
23 set floors for particular ad exchanges?

24 A No.

25 Q All right. You talked about on direct -- and I've

Cross-Examination - A. Borgia

1 heard you say previously -- that the three core pillars of
2 safety in a digital advertising ecosystem are policies,
3 enforcement, and transparency. Right?

4 A Yes.

5 Q And you agree that those are three core pillars to the
6 safety of digital advertising?

7 A Yes.

8 Q I want to talk a little bit about each of those
9 particular core pillars with you that you talked about on
10 direct.

11 Starting with the policies, so you have specific
12 policies. You showed a graph, and it had different labels
13 for each bar, right. And so you have policies for
14 inappropriate or potentially harmful to the ecosystem
15 policies?

16 A Yes.

17 Q Another bucket would be abusing the network?

18 A Yes.

19 Q Scam risks?

20 A Yes.

21 Q You talked a little bit more about privacy. So there
22 are policies about privacy?

23 A Yes.

24 Q Legal risks?

25 A Yes.

Cross-Examination - A. Borgia

1 Q And basic baseline expectation in fairness?

2 A Can you repeat the last word? I could not hear it.

3 Q Fairness was the last word, but I'll repeat the whole
4 thing: Was basic baseline expectation in fairness?

5 A Yes.

6 Q Okay. In these types of policies, Google informs
7 everyone involved about Google having these policies. What
8 I mean is you tell publishers that you have these policies,
9 right?

10 A Yes.

11 Q You tell advertisers you have these policies?

12 A Yes.

13 Q And then you tell the general public or Internet users
14 that you have these policies?

15 A Yes. They're posted on our website.

16 Q So I want to talk specifically about policies. So
17 Google has around 313 policies for ad privacy and safety; is
18 that right?

19 A That's about right. It's probably more than that, but
20 it's in the ballpark.

21 Q And in particular, at least in July of 2021, Google
22 actively managed 10 percent of those policies, right?

23 A "Actively managed" is a term that means something
24 specific inside Google.

25 Q Right. What I'm asking you is Google's definition,

Cross-Examination - A. Borgia

1 meaning Google only -- of the 313 policies only actively
2 managed by Google's definition 10 percent of those policies?

3 A Yes.

4 Q All right. And you and your team of trust and safety
5 believed that there were a significant higher portion that
6 required or mandated active monitoring enforcement, right?

7 A It's -- one of the options is to continue to increase
8 active management, but there are other ways of protecting
9 the ecosystem beyond active management.

10 THE COURT: Well, for my understanding, what do
11 you understand active management means?

12 THE WITNESS: Active management specifically in
13 our team means when there's a dedicated model for a
14 particular set of policies, as opposed to general models.
15 So we have certain sets of policies where we build a custom
16 model, and we have a team monitoring that policy. And we
17 have other policies that are modeled with generic models
18 across the board.

19 THE COURT: Can you be more specific? Give me an
20 example.

21 THE WITNESS: Oh, so I would fail to remember
22 which specific policies, but there are policies -- actually,
23 I'll pick like adult content because I know one of the areas
24 that have specific tailored models. So that means that we
25 built a custom machine learning model for that policy, and

Cross-Examination - A. Borgia

1 we have a team that's managing that set of policies versus
2 using a general purpose machine learning model that's
3 trained across a broad set of policies.

4 THE COURT: Okay.

5 MR. FREEMAN: Maybe I can help this, Your Honor.

6 BY MR. FREEMAN:

7 Q Would you agree that something in need of active
8 management meant it lacked metrics, owners, or effort but
9 has significant user reports, escalation, or legal,
10 regulatory, or PR risks, right?

11 A No.

12 Q No, that's not correct?

13 A I would say that there are many ways to provide safety.
14 That's only one of them.

15 Q Okay. So in your binder in front of you would be --
16 it's under Google and then with the last numbers 663. Do
17 you see that?

18 THE COURT: It's towards the back of the book.

19 BY MR. FREEMAN:

20 Q I can represent that this document came from your
21 custodial files.

22 A Yes.

23 Q And in particular, just to orient the Court, that this
24 is a slide deck created by ads privacy and safety and also
25 trust and safety. Do you see that?

Cross-Examination - A. Borgia

1 A Yes.

2 Q And it is Ads Policy Enforcement Step Change Investment
3 Proposal, right?

4 A Yes, that's correct.

5 Q So it is a proposal to the decision-makers eventually
6 to invest more into ads privacy and safety, right?

7 A Yes.

8 Q And one of the reasons why Google felt a need to do
9 that is because there's increasing pressure from regulatory
10 authorities, right?

11 A Well, it's to keep the ecosystem safe, which includes
12 regulatory and many other pressures.

13 Q So if you go then to the fifth slide of this, the sixth
14 of the actual PDF, you see expectations are increasing,
15 right?

16 A Yes.

17 Q And on the left, from outside stakeholders, increased
18 regulatory scrutiny from both consumer protections and
19 competition authorities, right?

20 A Yes.

21 Q So one of the reasons why ad privacy and safety was
22 asking for more money was because there was increasing
23 regulatory scrutiny, right?

24 A Yes, it is one of the reasons.

25 Q Okay. If we go back one page then, you can see where I

Cross-Examination - A. Borgia

1 got my questions at the top where it says, "Out of 313
2 policies, only able to actively manage 32 policies,
3 10 percent."

4 A Yes, that's what I explained earlier.

5 Q Right. And the ad privacy and safety team believed
6 that 148 additional policies merited active management,
7 right?

8 A This was a proposal in 2021. I don't --

9 Q Is that yes or no?

10 A No.

11 Q No. You're saying that in 2021, ads privacy and safety
12 was not asking for more money because they believed 148
13 additional policies, 47 percent, merited active management?

14 A Yes. At the time, yes.

15 Q Okay. And if you go, then, to the back of this, to put
16 in more context of what active management means, to --
17 ending in 681 on the bottom right, which would be page 20.
18 Yeah. And do you see here this chart says only 10 percent
19 of policies are actively managed, right?

20 A Yes.

21 Q And then in the bottom, it defines exactly what
22 actively managed means, right?

23 A Yes.

24 Q It says needs active management, means it lacks
25 metrics, owners, effort, but has significant user reports,

Cross-Examination - A. Borgia

1 escalations, or legal or regulatory PR risks, right?

2 A Yes.

3 Q So that's the definition of needing active management
4 within Google and the ads privacy safety team, right?

5 A Yes.

6 Q So the definition that I asked you, that is the
7 definition that Google used in determining whether something
8 needed active management --

9 A This is a summary slide that gives very little detail.
10 It's a summary of the definition.

11 Q Right. If you look at it, there's actual details of
12 what policies were being actively managed.

13 A Yes.

14 Q And do you see privacy, that there was only one policy
15 that was actively managed even though Google themselves
16 believed that there should be 28 additional policies
17 actively managed, right?

18 A It was a proposal, yes.

19 Q And Google also was actively monitoring zero policies
20 that had to do with legal risks, right?

21 A Yes. Again, active management is only one form of
22 enforcement.

23 Q And Google believed that 22 deserved active management,
24 right?

25 A That was a proposal, yes.

Cross-Examination - A. Borgia

1 Q A proposal because Google Ads' safety and privacy
2 believed it was necessary for the clean ecosystem, right?

3 A Yes.

4 Q Ecosystem cleanliness and fairness policies, actively
5 managed zero, right?

6 A Yes.

7 Q Even though Google believed that 15 were required to
8 be -- or merited active management, right?

9 A Yes, merited, not necessarily required.

10 Q Baseline ad expectations, actively managed policies,
11 zero, right?

12 A Yes.

13 Q Even though Google's ad privacy and safety team
14 believed that four merited, right?

15 A Yes.

16 Q And even in inappropriate or potentially harmful,
17 Google actively managed 19, but Google's team believe 49
18 merited active management, right?

19 A Yes.

20 Q Scam risks. Google actively managed 2 despite ads
21 privacy and safety saying that 14 merited active management,
22 right?

23 A Yes.

24 Q Ultimately, this proposal that was made was only
25 partially funded, right?

Cross-Examination - A. Borgia

1 A Yes.

2 Q And then ultimately was deprioritized the next year,
3 right?

4 A I don't believe that that's an accurate representation.

5 Q You don't believe that's an accurate representation.

6 Okay. Go to your -- the very next tab with the Bates
7 number ending in 1108.

8 Do you see that?

9 A Yes, I do.

10 Q Just to orient, this is last updated September 30,
11 2022?

12 A Yes.

13 Q Owner author, there's three people listed, Scott
14 Spencer, and then the next person is you, right?

15 A Yes.

16 Q And then Don Burton?

17 A Yes.

18 Q Okay. If you go to page 7 of this particular document
19 that you were an author of -- and you can see at the very
20 top, "Last year we proposed to dramatically reduce user harm
21 and regulatory risk requiring a substantial multiyear
22 investment," right?

23 A Yes.

24 Q Okay. And then it says, "While we were only partially
25 funded" -- do you see that?

Cross-Examination - A. Borgia

1 A Yes.

2 Q -- "we made significant process [sic]."

3 And if you go to the next sentence, "However the
4 landscape has changed over the last year," right, "including
5 large new regulatory requirements, new product services."

6 Do you see that?

7 A I do.

8 Q And then if you go to the middle of the page, "Until
9 the investment landscape exchanges, meeting these priorities
10 will come at the expense of difficult trade-offs," right?

11 A Yes.

12 Q "We are currently planning to deprioritize" -- and then
13 the first one, "We will pause our step change ambition to
14 drive dramatically better decision quality and scalability,
15 including the push to increase our actively managed policies
16 to 50 percent," right?

17 A Yes.

18 Q So when I asked my question about this was only
19 partially funded and then later deprioritized, that is
20 correct, right?

21 A That initiative but not the safety that's implied by
22 the -- or the goal of the initiative because the safety
23 increased.

24 Q So even by your own account, even despite the ads
25 privacy team recommended more actively managed funding, it

Cross-Examination - A. Borgia

1 was only partially granted, not completely granted?

2 A Yes, because it's only one way of providing safety.

3 And so we went a different direction and provided more
4 safety in a different way.

5 Q By not actively managing policies that include scam
6 risks?

7 A Correct. We actually provide safety through different
8 means for those same policies.

9 Q So you said one of the other core pillars is
10 transparency, right?

11 A Yes.

12 Q And you were shown some of your AdSafety reports,
13 right?

14 A Yes.

15 Q So in your AdSafety reports for transparency sake, do
16 you disclose that Google only actively managed 10 percent of
17 your policies?

18 A No.

19 Q Was Google transparent in those annual reports that
20 they had zero active management for policies, including
21 legal risks, cleanliness, and fairness and baseline ad
22 expectation? Were you transparent about that?

23 A No, because it's irrelevant.

24 Q It's irrelevant for that to be known to the public, to
25 be transparent that you were not actively managing those

Cross-Examination - A. Borgia

1 policies?

2 A Yes, because we provide safety for those policies
3 through other means.

4 Q But wasn't the AdSafety -- ads privacy and safety team
5 recommending -- it being -- it was merited that those
6 policies deserve active management. So it was the
7 recommendation of the ads privacy and safety team, right?

8 A One of many recommendations that we do to increase
9 safety.

10 Q Right. So were you transparent that the ads privacy
11 and safety team was only actively monitoring 10 percent of
12 the policies?

13 A No, because it wouldn't be useful information for
14 anyone outside of Google.

15 Q You don't think that would be useful information for
16 publishers to know that you're only actively managing 10
17 percent of your policies?

18 A No, because we're providing safety on all of the
19 policies through other means.

20 THE COURT: Why don't you specify? What are the
21 other means?

22 THE WITNESS: So I mentioned that we have general
23 purpose models and custom models. General purpose models
24 have been improving in quality over the last several years,
25 especially with the advent of large language models.

Cross-Examination - A. Borgia

1 Additionally, we have protections that are at the
2 front door checking the advertisers that come into the
3 ecosystem and the publishers that come into the ecosystem.

4 As we've increased those protections, we've seen
5 safety increase in the overall ecosystem even without
6 requiring active management, and we scale more effectively.
7 So it's actually a better approach that we're pursuing
8 today. We're not seeking to increase active management of
9 any policy today because we're increasing safety through
10 these other means, large language models and advertiser
11 models.

12 THE COURT: Would a language model be like word
13 searches, certain keywords like "sexually explicit
14 material"? Is that the kind of thing you're talking about?

15 THE WITNESS: Not just keywords. You're looking
16 at the full context of entire images. It's multi-model. So
17 it can look at images, video, text and analyze the content
18 and even understand whether --

19 As an example -- we saw examples of a child in an
20 advertisement without a helmet on a motorcycle, and the
21 large language model is able to detect that without having a
22 custom model. So the advances in our large language models
23 and other machine learning technologies mean that it's not
24 necessary for us to actively manage policies.

25 THE COURT: Thank you.

Cross-Examination - A. Borgia

1 BY MR. FREEMAN:

2 Q In 2021, before those things took off, the ads privacy
3 and safety team believed that they deserved to be actively
4 managed, right?

5 A We did at the time believe that was an approach we
6 could follow.

7 Q And in the 2021 AdSafety report, were you transparent
8 before these other things came into existence, that you were
9 only actively managing 10 percent of your policies in 2021?

10 A No. Because to be clear, we still did provide safety
11 on all of those policies through other means.

12 Q Were you being transparent that the AdSafety and
13 privacy team requested more money that was only partially
14 funded?

15 A No. We're always requesting more money. That's a
16 constant state of affairs in every business. Every team
17 asks for more investment.

18 Q Did you release the data associated with the numbers in
19 the AdSafety report?

20 A I don't understand the question.

21 Q Well, you just have a summary chart. Did you release
22 the data that supports those charts to the public for
23 transparency purposes?

24 A That is the data that we use.

25 Q Sir --

Cross-Examination - A. Borgia

1 (Ms. Morgan stands.)

2 A So I'm not following the question because it is the
3 data.

4 THE COURT: Wait.

5 MS. MORGAN: You know what? Never mind. It's
6 fine. Go ahead.

7 BY MR. FREEMAN:

8 Q You're saying there's no underlying data to those
9 summary charts?

10 A Well, there's specific counts of each and every
11 instance that added up to that bar, yes.

12 Q Right. So the underlying data, like this ad at this
13 time, was prevented. Did you release that data as part of
14 your transparency?

15 A Well, in the Ads Transparency Center, we do show ads
16 that are --

17 Q That's not my question. My question was, during the
18 annual safety report, did you release the data?

19 A The data is the data. So I guess I'm not understanding
20 the question because that is the data. Showing like the
21 individual account that adds up to the total number does not
22 ad any additional information.

23 Q There's nothing that the public can do to verify that
24 those numbers are accurate, right?

25 A Correct.

Cross-Examination - A. Borgia

1 Q Did you release the names or identities of the
2 publishers or advertisers you took actions against in the
3 AdSafety report?

4 A No. We have confidentiality agreements with our
5 advertisers and publishers.

6 Q Did you indicate the countries or languages these
7 publishers or advertisers used?

8 A In the AdSafety report?

9 Q That's right.

10 A No, we do not. We do not currently have a breakdown by
11 country. That is something we're considering for the
12 future. We do not have it today.

13 Q The fact that Google is taking down more ads each year
14 doesn't necessarily mean that you're seeing more badness,
15 right?

16 A If we're taking down more ads, there's more badness.
17 So I'm not understanding the question.

18 Q Let's go to DTX 1490 in that.

19 THE COURT: Any objection to 1490?

20 MS. MORGAN: No objection, Your Honor.

21 THE COURT: All right. It's in.

22 BY MR. FREEMAN:

23 Q So this is an AdSafety report turned in by you, right?

24 A Yes, that appears to be the case.

25 Q Okay. And if you go to page 11 of DTX 1490, the third

Redirect Examination - A. Borgia

1 question down from your own training says, "Each year, more
2 ads are taken down, is that because you're seeing more
3 badness?"

4 Your answer is, "Not necessarily," right?

5 A Yes. There are several factors that play into changes
6 in data.

7 Q That was different than your answer that you gave me 30
8 seconds ago, right?

9 A I wasn't following your line of thought. Now that I
10 see it on paper, it helps me to understand it.

11 Q You said that user data can be used for positive or
12 negative on direct examination. Is that right?

13 A Yes, that's correct.

14 Q Is it true that Google paid the FTC over a \$100 million
15 fine for collecting children's data unlawfully for ads?

16 A I'm not aware of that.

17 Q You're unaware of that as the AdSafety -- on the
18 AdSafety team?

19 A I am not aware of that.

20 MR. FREEMAN: Nothing further, Your Honor.

21 THE COURT: All right. Any redirect?

22 REDIRECT EXAMINATION

23 BY MS. MORGAN:

24 Q I'm going to be brief, Mr. Borgia.

25 The first document I want you to look at is a document

Redirect Examination - A. Borgia

1 that I'm hoping Mr. Klein can help me with. It was the MDL
2 Document 019789663 that was shown to you on your cross.

3 A The step change proposal investment?

4 Q It is the Ads Policy Enforcement Step Change Investment
5 Proposal.

6 A Yes.

7 Q Yes. Do you remember being asked questions about this
8 document?

9 A Yes, I do.

10 Q Okay. When was this document written?

11 A July of 2021.

12 Q Were you an author on this document?

13 A No.

14 Q Okay. Let's go to the page that is marked with the
15 Bates No. 89681 at the end, which is one of the charts that
16 you were shown.

17 Do you remember being shown this page?

18 A Yes. If you can zoom in and --

19 Q Oh, wrong document, wrong page. He'll put it up in a
20 minute. I don't want to make you flip all the way through
21 the document.

22 A No problem. Thank you.

23 Q Okay. Do you remember being asked about this slide?

24 A Yes, I do.

25 Q Okay. And at the top, it says only 10 percent of

Redirect Examination - A. Borgia

1 policies are actively managed.

2 Do you see that?

3 A Yes, I see that.

4 Q In 2021, was Google only enforcing 10 percent of its
5 policies?

6 A No.

7 Q Has Google ever only enforced 10 percent of its
8 policies?

9 A No.

10 Q And does active management -- is active management
11 synonymous with enforcement in any way?

12 A No. It's one form of enforcement.

13 MS. MORGAN: Okay. You can go ahead and take that
14 document down.

15 BY MS. MORGAN:

16 Q The next document I want to show you is another
17 document that you were shown on cross.

18 MS. MORGAN: I'm also going to ask Mr. Klein to
19 help me. So let me show him the document, which is Bates
20 stamped 6861108.

21 BY MS. MORGAN:

22 Q Do you remember being asked about this document?

23 A Yes, I do.

24 Q Okay. What is this document?

25 A This is an investment proposal. Every year we ask for

Redirect Examination - A. Borgia

1 more resources. So we put together a proposal that
2 describes what we would do with those resources, and so it's
3 just another way of asking for more resources to get more
4 funding.

5 Q Okay. What was the decision that was made after you
6 made this proposal?

7 A Actually, the decision was go back and sharpen your
8 pencil. It is unacceptable for safety to be impacted in any
9 way. You need to make sure that you meet all regulatory
10 requirements and also increase safety at the same time.

11 Q Was your team able to do that?

12 A Yes, we successfully did that.

13 Q How did you do it?

14 A Well, for one thing, the regulatory requirements that
15 we had at the time of this document were unclear. And in
16 the ensuing months, we got more clarity, and it became
17 easier to meet those requirements.

18 And at the same time, we continued to invest in other
19 mechanisms, like safety by design, which is a mechanism to
20 make the ads ecosystem inherently safer. For instance, by
21 leveraging information about the advertiser, as I mentioned
22 earlier, stopping more advertisers at the door. Net, net.
23 We actually increased our safety by 70 percent over the
24 following year.

25 Q Okay. I want you to now go to page 7 of the document,

Redirect Examination - A. Borgia

1 which has the Bates stamp 6861114. And we can just focus on
2 the first paragraph.

3 Do you remember being shown this paragraph during the
4 cross-examination?

5 A Yes.

6 Q In the first sentence, it says, "Last year we proposed
7 to dramatically reduce user harm and regulatory risk
8 requiring a substantial multiyear investment."

9 What does the sentence after that say?

10 A It says, "While we were only partially funded, we made
11 significant progress, reinforcing our belief that it is
12 still the right long-term strategy to increase safety and
13 trust in the ads ecosystem."

14 Q Do you remember that on cross-examination this was read
15 to you as we made significant process, not progress?

16 A I did not catch that.

17 Q Do you agree that you made significant progress?

18 A We did indeed make significant progress. I do agree.

19 MS. MORGAN: Okay. We can take that document
20 down, and I will go to DTX 1490.

21 BY MS. MORGAN:

22 Q You were also shown this document during your
23 cross-examination, right?

24 A Yes.

25 Q I want to focus first on the first paragraph where it

Redirect Examination - A. Borgia

1 says "review key messages" and the bullets under that. What
2 are the key messages for AdSafety that were shared by you in
3 this document?

4 A At the very top, it starts by saying, "It's our
5 responsibility to develop and enforce policies that help
6 keep people and our partners safe while using our
7 advertising products."

8 It talks about transparency breeding trust with people
9 and our partners, that digital advertising has been a
10 positive force for decades, and that we think our approach
11 to safety and transparency is a model for our entire
12 industry and is a crucial point to preserving the economic
13 model that has powered the open Internet for decades.

14 We work incredibly hard -- I can personally attest to
15 that -- to stay nimble and to use all of the tools at our
16 disposal to prevent bad actors who seek to take advantage of
17 or misinform people.

18 Q Okay. Let's go -- do you agree with those statements?

19 A 100 percent.

20 Q Let's go to page 11. You were asked a question about
21 the statement here, "Each year more ads are taken down. Is
22 that because you're seeing more badness?"

23 Do you remember being asked about that?

24 A Yes.

25 Q I want to direct you to the second paragraph under that

Redirect Examination - A. Borgia

1 that starts with the words, "We have also."

2 What does that sentence say?

3 A It's saying that we've seen an increase in fraudulent
4 activity by adversarial actors during the pandemic.
5 Advertisers -- bad actors are becoming more sophisticated.
6 So it says their techniques have become more sophisticated,
7 and the scale in which they operate has increased often
8 running entire networks of accounts. That's why we've
9 heavily invested in our technology, to detect coordinated
10 activity. We look at many factors, IP address, billing
11 information, and general patterns to take broader action,
12 not just at the ad level but suspending multiple accounts
13 that are linked to the same bad actor.

14 Q When you said we've also seen an increase in fraudulent
15 advertising, is that consistent with the notion of seeing
16 more badness?

17 A Yes, we have seen more badness.

18 MS. MORGAN: Okay. I have no further questions.

19 THE COURT: Any recross?

20 MR. FREEMAN: No, Your Honor.

21 THE COURT: I assume no one is going to call this
22 witness again.

23 MS. MORGAN: We are not, Your Honor.

24 MR. FREEMAN: No, Your Honor.

25 THE COURT: Then you are now released as a

Video Deposition - K. Blom

1 witness. You can stay and watch the proceedings or leave,
2 but you're not to discuss your testimony with any witness
3 who has not yet testified.

4 Thank you.

5 THE WITNESS: Yes, Your Honor. Thank you.

6 THE COURT: Your next witness.

7 MS. DUNN: Your Honor, so we had planned on
8 calling additional small business witnesses, but having
9 heard the Court's feelings on cumulative testimony and in a
10 concession to the shortness of life, we are going to move,
11 with the Court's permission, to the video and read-in
12 portion of our day. And we'd like to finish the video we
13 started yesterday with Kenneth Blom from BuzzFeed.

14 THE COURT: All right. That's fine. I think I
15 need his --

16 MS. DUNN: Do you need an additional binder?

17 THE COURT: I'm not sure.

18 Okay. I've got it.

19 MS. DUNN: Thank you, Your Honor.

20 THE COURT: Wait. What page are we on?

21 MS. DUNN: I'm told we're at page 81, line 12.

22 THE COURT: Thank you.

23 (Video played.)

24 MS. DUNN: All right. Your Honor, this part is
25 sealed, so we will give Your Honor a moment.

Video Deposition - K. Blom

1 THE COURT: You know, I have to tell you. The
2 version I have does not have any indication -- if you've got
3 one with the red lines, that's what I should be looking at.

4 MS. WOOD: It should be the first tab in your
5 binder, Your Honor. It says Blom Designation Digest.

6 THE COURT: I've got it now. All right. Thank
7 you.

8 MS. DUNN: Thank you.

9 MS. WOOD: We're on page 11 of 23.

10 THE COURT: I've got it now. All right. Thank
11 you.

12 (Video played.)

13 MS. DUNN: Your Honor, we move to admit 1616.

14 MS. WOOD: No objection.

15 THE COURT: Hold on a second.

16 MS. DUNN: PTX 1616.

17 THE COURT: We need to take a break right now.
18 This will be the last break for the day. Fifteen minutes
19 until five of.

20 (Brief recess taken.)

21 THE COURT: How much longer? I'm just trying to
22 get an estimate for the afternoon.

23 MS. DUNN: Yeah. So this video has seven minutes
24 remaining.

25 THE COURT: Great. Then what are we doing?

Video - Todd Parsons

1 MS. DUNN: And then we plan to play the Criteo
2 video. It's 22 minutes.

3 THE COURT: All right.

4 MS. DUNN: And then with the time remaining, we
5 would like to do a read-in of Eric Hochberger, who is CEO of
6 Mediavine.

7 THE COURT: So we have everything lined up. So
8 we're all set.

9 MS. DUNN: I think, Your Honor, just before we
10 broke, I moved to admit 1616.

11 THE COURT: 1616, any objection?

12 MS. WOOD: No objection.

13 THE COURT: All right. It's in.

14 MS. DUNN: Thank you, Your Honor.

15 (Video played.)

16 THE COURT: All right.

17 MS. DUNN: Your Honor, Google calls Todd Parsons
18 from Criteo via video, and we have binders to hand out.

19 THE COURT: All right. Ready.

20 (Video played.)

21 MS. DUNN: Your Honor, move to admit DTX 1257.

22 MS. WOOD: No objection.

23 THE COURT: All right. 1257 is in.

24 (Video played.)

25 MS. DUNN: Your Honor, we move to admit DTX 1179.

Video - Todd Parsons

1 MS. WOOD: No objection.

2 THE COURT: All right. 1179 is in.

3 (Video played.)

4 MS. DUNN: Your Honor, move to admit DTX 1544.

5 MS. WOOD: No objection.

6 THE COURT: All right. 1544 is in.

7 (Video played.)

8 MS. DUNN: Your Honor, with respect to DTX 1544
9 that was admitted, there is a redacted portion. So we'd
10 like to also admit 1544A.

11 THE COURT: Okay.

12 MS. DUNN: And then with respect to the Criteo
13 10-K, which is DTX 1071, we move to admit, consistent with
14 the past practice of this trial, only the pages that were
15 referenced in the deposition.

16 MS. WOOD: No objection.

17 THE COURT: All right. Hold on a second. What
18 are those pages just for the record?

19 MS. DUNN: So with the Court's indulgence,
20 pages 14 and 22 were identified in the transcript. So I was
21 able to identify those. But I think there are two other
22 pages that were just referred to as this document. So with
23 the Court's indulgence, I'd like to get back to the Court
24 those other pages.

25 THE COURT: Okay.

Read-In - E. Hochberger

1 MS. DUNN: Thank you.

2 And with the Court's permission, we would like to
3 call Eric Hochberger of Mediavine as a read-in.

4 THE COURT: All right.

5 MS. DUNN: And we have binders to hand up.

6 And just for the record, Your Honor, Eric
7 Hochberger is founder and CEO of Mediavine. And I say that
8 because I do not believe the deposition establishes his
9 title, but I don't think plaintiffs will object.

10 MS. WOOD: No objection.

11 THE COURT: All right. That's fine.

12 MS. DUNN: May I proceed?

13 THE COURT: Yes.

14 (The deposition of Eric Hochberger is read as follows:)

15 Q So, roughly, how many employees are at Mediavine?

16 A Roughly, about 200.

17 Q And how has that number changed throughout the years?

18 A Most of that growth has been in the last eight years
19 where like eight years ago it was just the cofounders and
20 one employee.

21 Q Just at a high level, what does Mediavine do?

22 A At a high level, we help independent publishers
23 monetize their websites through advertising.

24 Q Do you also own and operate your own websites, which in
25 this world would be publishers?

Read-In - E. Hochberger

1 A Yes. We own and operate a few of our own properties as
2 well.

3 Q Do you have an approximation of how much your annual
4 revenue comes from dealing with Google?

5 MS. DUNN: And this part is sealed. I'll let the
6 Court read.

7 THE COURT: Go ahead.

8 Q Okay. Switching gears a little bit, back to Mediavine
9 and your business, who are your pool of customers for
10 clients?

11 A So it's independent content creators. So smaller
12 publishers you can say, things such as blogs.

13 Q When you use the term "smaller publishers", can you
14 define that in any metric?

15 A So our industry uses Comscore generally for metrics of
16 size and sight. And I would say they're not in the top
17 Comscore 500 properties. So they would be considered by our
18 industry standard small.

19 Q So what products does Mediavine have to help service
20 your clients?

21 A Primarily, we offer what we call full-service ad
22 management. So that would be the full monetization of their
23 website and the associated technology and support staff and
24 sales.

25 Q Does Mediavine have any internal platforms or products

Read-In - E. Hochberger

1 that they use?

2 A We do. We offer other tools to help publishers, like,
3 run their website. So we have a product, for example,
4 called Trellis that is -- helps them run their day-to-day
5 site by being a word press theme.

6 Q When you say run their day-to-day, does that include
7 managing ads on their website?

8 A Not that technology, no. That is more for maintaining
9 the site speed and controlling the look and feel of the
10 site. So helping them not with the ad side of it.

11 Q Do you have any proprietary platform or product about
12 managing ads?

13 A Yes.

14 Q What are those products?

15 A So a lot of these don't have, like, formal names. But
16 I'll just call them, like, our script wrapper or our on-page
17 code that helps kind of serve up the ads and manage things
18 like the auctions.

19 And then we have back-end technology called the
20 Mediavine exchange, our S-to-S solution that does the actual
21 auction of the bids. Those would be our proprietary
22 technologies.

23 Q And then does Mediavine use any other external
24 platforms or products in servicing ad management for your
25 clients? What platforms do you use the most?

Read-In - E. Hochberger

1 Let's -- let's start there, outside platforms this is.

2 MS. DUNN: This part is sealed.

3 THE COURT: Okay. Go ahead.

4 Q Okay. Lets start the list then. Okay.

5 MS. DUNN: And this part is also sealed.

6 THE COURT: I don't know why this is sealed.

7 MS. DUNN: I don't know either, Your Honor. I'm
8 happy to read it, or you are happy to read it.

9 THE COURT: I'm reading it.

10 MS. DUNN: Okay.

11 THE COURT: All right. Go ahead.

12 Q Does Mediavine have its own publisher ad server?

13 A We do not.

14 Q What publisher ad server or servers, plural, does
15 Mediavine use?

16 A For ad serving itself, we either use Google Ad
17 Manager -- and that does a lot of the ad serving -- or we
18 can serve directly on page without an ad server involved --
19 without a third-party ad server involved, I should say.

20 Q So are you familiar, then, with the term "DFP" or
21 "DoubleClick for Publishers"?

22 A Yes.

23 Q And so when you use the term "Google Ad Manager," does
24 that include what I think most people call DFP?

25 A Yes, that's the former name. DFP was rebranded to

Read-In - E. Hochberger

1 Google Ad Manager.

2 Q Do you ever refer to Google Ad Manager ever as GAM,
3 G-A-M?

4 A We do.

5 Q Just approximately when did Google rebrand DFP as GAM?

6 A I don't recall the exact date, probably within the last
7 five years.

8 Q Did you -- by you, I really mean Mediavine is what I
9 mean. Did Mediavine use DFP prior to being rebranded as
10 GAM?

11 A Yes.

12 Q Approximately how long ago did Mediavine start using
13 DFP?

14 A In some form, we have used Google's ad serving products
15 probably over a decade, maybe longer.

16 Q So I want to talk about the time frame before it was
17 all part of GAM.

18 A Uh-huh.

19 Q What was the fee or take rate of using DFP?

20 A I mean, at the very beginning of when we were using it,
21 I believe we were using a small business product that was
22 free.

23 Q And then that changed, obviously, over time?

24 A Based on size, yeah. As we grew -- outgrew the free
25 impression tier.

Read-In - E. Hochberger

1 Q What's the largest publisher ad server in today's
2 market?

3 A To the best of my knowledge, I would say it would be
4 Google Ad Manager.

5 Q Do you have an approximation of how much market share
6 that Google Ad Manager has?

7 A I do not.

8 Q Do you know of the other publisher ad servers in the
9 market today?

10 A We have not been actively exploring other ad servers in
11 a long time. So I would not be an expert on that.

12 Q Are you aware of any other competitors of Mediavine
13 using a different publisher ad server?

14 A I am not aware of the ad servers of all of our
15 competition.

16 Q Does Mediavine have its own ad exchange?

17 A We do have some direct integrations with demand-side
18 platforms. So you could look at it as an exchange, but it's
19 exclusively for our own publishers. So I don't think that
20 term would commonly be used.

21 Q What ad exchange does Mediavine use?

22 A We use several. Some of the names I mentioned before,
23 Magnite, PubMatic, in addition to, obviously, Google ad
24 exchange.

25 Q I think the last question I asked before we took a

Read-In - E. Hochberger

1 break is what was AdX's take rate for Mediavine?

2 A It's a variable take rate.

3 Q Okay. Can you give me the bookends?

4 A I think it can go as high as 20 percent in AdX's favor.

5 Q And as low as?

6 A I don't know, zero, negative. That's up to them.

7 Q Well, I guess I'm confused by that a little bit. In
8 terms of its variable depending on what point, what year did
9 Mediavine has had with AdX?

10 A I believe on a per request basis was --

11 Q Has that changed throughout the years that you've been
12 dealing with Google?

13 A So, yeah. The feature I'm describing right now is an
14 optional feature that we enabled that variable.

15 Q Prior to taking this optional feature, what was the
16 take rate of AdX?

17 A And that's where I believe I'm getting the 80/20 from,
18 would be the original agreement, and then we agreed to a
19 variable to make AdX more competitive. At the end of the
20 day, we won, obviously, the most competitive product.

21 Q What are the other competitors to AdX?

22 A So to AdX would be other SSPs. So that would be some
23 of the names I mentioned, again, before, Magnite, PubMatic,
24 OpenX.

25 Q Are you familiar with the take rate of those particular

Read-In - E. Hochberger

1 platforms?

2 A Not the exact take rate, no.

3 Q Do you have an estimate of what the take rate is?

4 A I mean, I would be -- again, speculating. So...

5 Q Are you aware of whether any of those charge higher
6 than 20 percent?

7 A Potentially, yes.

8 Q When you say potentially, you're aware that other --

9 A I am aware that in some agreements -- again, I'm not a
10 100 percent into the specifics. But there are different
11 rates based upon different types of deals. And some of them
12 may exceed 20, and some may be lower.

13 Q When you talk about some agreements, are you talking
14 about Mediavine agreements?

15 A Mediavine's agreements.

16 Q Do you know which ad exchange has a take rate with
17 Mediavine of more than 20 percent?

18 A So some of the agreements are confidential, and I am
19 not always a party to those contracts. So I could not tell
20 you exactly which ones are above that 20 percent or below.
21 I would not be the best source for that.

22 Q Are you sure, then, that there are other agreements
23 with other ad exchanges that take rates exceed 20 percent?

24 A I am positive there's at least one agreement between
25 Mediavine and another exchange where there are types of

Read-In - E. Hochberger

1 deals that will exceed 20 percent, yes.

2 Q Why would Mediavine agree to take a rate higher than
3 AdX?

4 A Our goal at Mediavine at the end of the day is to get
5 the highest yield or the highest dollar amount per
6 impression. And if someone is going to take a higher take
7 rate but still bid more money for that impression, Mediavine
8 will -- ultimately, will make more money. So that is why.

9 Q But does Mediavine use header bidding?

10 A We do.

11 Q What is header bidding?

12 A That was what I previously referred to as prebids, what
13 we use for this. But header bidding is that action taking
14 bid requests from multiple exchanges before sending the bid
15 into the ad server. So it participates inside the header.

16 Q So approximately when did Mediavine start using header
17 bidding?

18 A Since we got into ad management. I don't recall the
19 exact date but before it was called header bidding. So
20 probably eight years ago.

21 Q Do you still use header bidding?

22 A We do.

23 Q Does header bidding have any effect on latency of
24 websites?

25 A Technically, all bid requests have a latency impact.

Read-In - E. Hochberger

1 Q But compare that to running an impression through GAM.
2 Is one faster or slower?

3 A I mean, it's going to depend on so many factors. So I
4 don't think I can answer which ones would be faster.

5 Q Have you ever indicated that you believed header
6 bidding did not cause any latency issues?

7 A I believe the way that we run header bidding, we
8 optimize the non-cause latency to the user. I probably
9 would have said to that effect.

10 Q Can you explain as high level as you can exactly what
11 is a waterfall?

12 A So a waterfall in the simplest terms would -- you go to
13 each partner one at a time, so each ad exchange, and say, Do
14 you want to bid for this impression?

15 And then if they say no, you move on to next one, which
16 is where it gets its name waterfall. So it cascades down
17 until you get a bid.

18 Q And again, this is kind of in the old world of it.

19 A Right.

20 Q Was there any determination of who was called first?

21 A Traditionally, in a waterfall, you would use historical
22 data to determine who you would place at the top of the
23 waterfall. So historically, it would be your top performer
24 would go to the top of the waterfall.

25 Q What was the issue or concern of conducting the

Read-In - E. Hochberger

1 impressions in this manner, selling of the impressions in
2 this manner?

3 A So the issue with the traditional waterfall setup is
4 that you are not getting real-time bids. You're using
5 historical averages of bids from different exchanges.

6 Q How did header bidding change this particular dynamic?

7 A It would allow all networks to submit a real-time bid
8 to compete in real-time.

9 Q When Mediavine started this concept, were you relying
10 on any product or platform from Google to do it?

11 A To do header bidding, no. But we were using Google to
12 record impressions.

13 Q And you testified, I think, that you were still using
14 DFP or GAM today.

15 A We are.

16 Q And are you still using header bidding today?

17 A We are.

18 Q Well, I guess let's talk about the dynamics of header
19 bidding. Again, high level, what are the dynamics of header
20 bidding in today's world?

21 A In today's world, you would take the bid from all your
22 different partners in header bidding, and they would submit
23 all of their bids. You would make the choice of which bid,
24 as the publisher, you wish to take. And you could either,
25 if you wish to -- as I was saying, you could technically

Read-In - E. Hochberger

1 render to page.

2 But we choose to render it through or record the
3 impression through Google Ad Manager so we have a record of
4 the auction. So we choose to interact with Google Ad
5 Manager as our record of ad serving.

6 Q Going back to what I'll call the old world, did you
7 believe that header bidding was good for publishers?

8 A Yes. That's why we offered it to our publishers.

9 Q Why did you believe it to be good for publishers?

10 A We could obtain a higher yield or revenue.

11 Q Well, in what context have you heard those phrases?
12 And let's start -- we'll get to first look, but let's focus
13 on last look like right now. In what context have you heard
14 the phrase last look?

15 A Last look would simply be you get a last look at an
16 impression, so after other people in terms of the industry.

17 Q Where have you heard that phrase or concept?

18 A I mean, people using that term, like, informally to
19 describe things like Google Ad Manager if -- at the end of
20 an auction.

21 Q People within Mediavine?

22 A I don't recall.

23 Q I mean, has anyone in Mediavine used the phrase "last
24 look" when talking about Google Ad Manager?

25 A I really don't recall.

Read-In - E. Hochberger

1 Q Prior to today, have you used the phrase "last look"
2 talking about Google Ad Manager?

3 A I can't recall a specific time.

4 Q But have you used that phrase?

5 A Likely.

6 Q When you used that phrase, what were you referring to?

7 A So, again, one of the reasons we implemented header
8 bidding was to get everyone a chance to bid. Google would
9 participate in that same auction. And in slang, you could
10 say that they would have last look because they would be
11 submitted after header bidding.

12 Q Did you review last look in GAM to be unfair?

13 A Again, I am looking at things from a publisher
14 perspective. And fairness to me doesn't matter. It's yield
15 optimization is the reason I would implement header bidding
16 or the reason I would put Google into that mix would be to
17 increase revenue. I don't care. I guess, again, the peer
18 definition of fair does not matter to a publisher. Yield is
19 all that matters.

20 Q Were you aware that Google was doing last look within
21 Google Ad Manager?

22 A Yeah. That's the setup we set up on purpose as a
23 publisher.

24 Q Are you familiar with the term "Unified Pricing Rules"
25 or sometimes referred to as UPR?

Read-In - E. Hochberger

1 A I am.

2 Q What is your understanding of UPR?

3 A They're a single set of pricing rules that we put into
4 Google Ad Manager that set the floor across the board. So
5 whether it would be Google bids, Google ad exchange bids, or
6 the bids that we are putting into ad manager or direct line
7 items or other such, just one set of pricing rules.

8 Q Are you familiar with the term "exchange bidding"?

9 A I am.

10 Q What is exchange bidding?

11 A So referring to the Google product, it is -- Google
12 performs a server side kind of version of header bidding
13 where they get bids in real-time from the exchanges.

14 Q Was exchange bidding implemented after you started
15 using the concept of header bidding?

16 A Yes.

17 Q Once Google implemented exchange bidding, did you see
18 any effect that had on the use of header bidding?

19 A I -- no, I guess. No. Actually, let me better define
20 that. So I would say, as a publisher, that actually gave us
21 the option to choose whether you want to put an exchange
22 through header bidding or through exchange bidding. So we
23 may have moved a partner or two from header bidding off
24 of -- into exchange bidding.

25 Q Do you know the largest buy-side source demand?

Read-In - E. Hochberger

1 A Again, from what perspective? From Mediavine's or from
2 an industry?

3 Q Let's use both. Let's start with Mediavine.

4 A Well, from Mediavine's perspective, our largest --
5 sorry, our largest DSPs either going to be The Trade Desk or
6 Google, and that will vary. So DV360 or Trade Desk are the
7 two largest buyers of Mediavine inventory.

8 Q Do you know of a company that offers a publisher ad
9 server, ad exchange, and demand-side platform?

10 A Do I know of a company that offers all three?

11 Q Other than Google.

12 A Oh, other than Google? Yeah, I believe there were
13 others over the years that had offered all three.

14 Q Like who?

15 A Xandr. They've been through so many acquisitions. I'm
16 trying to remember what they're called now. Whatever Xandr
17 was -- has become. They were previously AppNexus and then
18 Xandr. Then I don't know their name. Had offered all
19 three. I believe -- sorry, there's so many name exchanges.
20 Admeld, Oath (phonetic), Yahoo offered all three. There
21 were other platforms over the years.

22 MS. DUNN: Your Honor, move to admit DTX 1733.

23 MS. WOOD: No objection.

24 THE COURT: All right. It's in.

25 Q I want to talk to you a little bit about the different

Read-In - E. Hochberger

1 SSP that Mediavine uses. I'd like to show you a document
2 that's been marked as Hochberger Defendant's Exhibit 1. Do
3 you recognize this document?

4 A I do.

5 Q What is it?

6 A I believe this is part of the privacy policy that
7 describes our partners and sharing of data and such.

8 Q Do you believe that this Defendant's Exhibit 1 is a
9 true and accurate copy of a printout of the Mediavine
10 website entitled Ad Management Partners?

11 A I believe, yes.

12 Q Was the website for the ad management partners on
13 Mediavine's website prepared in the ordinary course of
14 Mediavine's business?

15 A Yes.

16 Q Do the entities listed here under supply-side partners
17 accurately reflect all of the SSPs that Mediavine works with
18 to sell its publisher companies customers' inventory group?

19 A To the best of my knowledge, this is an accurate
20 listing of all of them.

21 Q Who is Amazon Publisher Services?

22 A That would be Amazon's supply-side integration with
23 publishers.

24 Q And does Mediavine sell ads on its publishers'
25 customers' inventory through Amazon Publisher Services?

Read-In - E. Hochberger

1 A We do.

2 Q Does Mediavine sell ads on it's owned-and-operated
3 inventory through Amazon Publisher Services?

4 A We do.

5 Q The next is Chicory. What's Chicory?

6 A Chicory is a unique partner that -- so we represent a
7 lot of food bloggers and Chicory helps kind of sell
8 sponsored ingredients on food bloggers' websites.

9 Q And so they are also an SSP; is that right?

10 A There are a source of supply, yes.

11 Q Does Mediavine sell ads on its publishers' customers'
12 inventory through Chicory?

13 A Yes.

14 Q Does Mediavine sell ads on its owned-and-operated sites
15 through Chicory?

16 A Yes.

17 Q What is Colossus?

18 A So Colossus would be another SSP or exchange.

19 Q And does Mediavine sell ads on its publisher customers'
20 inventory through Colossus?

21 A Yes.

22 Q Does Mediavine sell ads on its owned-and-operated
23 inventory through Colossus?

24 A Yes.

25 Q The next is we talked about Google already today. So

Read-In - E. Hochberger

1 the next one is GumGum. What is GumGum?

2 A Again, GumGum would be an SSP.

3 Q And does Mediavine sell ads on its publisher customers'
4 inventory through GumGum?

5 A We do.

6 Q Does Mediavine sell ads on its owned-and-operated
7 inventory through GumGum?

8 A We do.

9 Q And are there any other SSPs that Mediavine sells its
10 publisher customers' ad inventory through that are not
11 listed here on Defendant's Exhibit 1?

12 A The only one that I can see it -- I'm trying to see
13 where PubMatic is on here. Did that get cut off? Oh, no.
14 It's right here. This is pretty exhaustive. This appears
15 to be all of them.

16 Q Moving on to the next section, which unfortunately
17 there are no page numbers. But there is a section that is
18 entitled Demand Side Partners. I think it's the
19 third-to-last page. Do you see that?

20 A Yes.

21 Q So I'd like to -- it's a more manageable list. I'd
22 like to go through them. What is Basis Technologies or
23 Centro?

24 A They would be a demand-side platform. So -- but we are
25 integrated with them as a partner.

Read-In - E. Hochberger

1 Q And what does that mean, that Mediavine is integrated
2 with them?

3 A Through our Mediavine exchange that I previously
4 referenced, we do have some direct connections to
5 demand-side partners in addition to supply-side. So bidders
6 are able to bid into the inventory.

7 Q So when you say a direct connection to a demand-side
8 partner, do you mean as an alternative to going through an
9 SSP?

10 A Correct.

11 Q And can ads be purchased through Basis for Mediavine's
12 owned-and-operated inventory?

13 A Yes.

14 Q What about the next one, Conversant LLC/Epsilon? What
15 is that?

16 A So it's almost a hybrid, both an SSP and a DSP. It's
17 owned by Epsilon, which is a large part of an agency. But,
18 yes, I would say for all intents and purposes, it's an
19 exchange similar in nature to the rest.

20 Q So can advertisers through Conversant place ads on
21 Mediavine's publisher customer inventory?

22 A Yes.

23 Q And can advertisers through Conversant place ads on
24 Mediavine's owned-and-operated inventory?

25 A Yes.

Read-In - E. Hochberger

1 Q What is Criteo?

2 A Our industry is so confusing. Criteo also now merged
3 with MediaGrid from the previous. It could be seen as now
4 both an SSP and a DSP or a demand-side partner. In this
5 particular thing, we're looking at Criteo as a DSP, which we
6 have a connection with.

7 Q Do you also -- strike that.

8 Does Mediavine also use Criteo as an SSP?

9 A Yes, through their acquisition of the MediaGrid.

10 Q Can advertisers through Criteo place ads on Mediavine's
11 publisher customers' inventory?

12 A Yes.

13 Q Can advertisers through Criteo place ads on Mediavine's
14 owned-and-operated inventory?

15 A Yes.

16 Q What is Open Path/The Trade Desk?

17 A So The Trade Desk is a DSP, and they have a direct
18 connection with publishers. And that's the product known as
19 Open Path.

20 Q So is the Open Path similar to Basis Technologies when
21 we were talking about the direct connection?

22 A Of the four, these would be most similar to Basis.

23 Q So can advertisers through Open Path place ads on
24 Mediavine's publisher customers' inventory?

25 A Yes.

Read-In - E. Hochberger

1 Q And can advertisers through Open Path place ads on
2 Mediavine's owned-and-operated inventory?

3 A Yes.

4 Q Let's shift to Mediavine's publisher customers.
5 Are Mediavine's publisher customers properties
6 accessible through Desktop Web.

7 A Yes.

8 Q And do Mediavine's publisher customers sell ads on
9 their Desktop Web properties?

10 A Through Mediavine, yes.

11 Q Are Mediavine's publisher customer properties
12 accessible through web browsers on mobile phones?

13 A Yes.

14 Q And do Mediavine's publisher customers use Mediavine to
15 sell ads that are accessible through web browsers on mobile
16 phones?

17 A Yes.

18 Q Are Mediavine's publisher customer properties
19 accessible through web browsers on tablets?

20 A Yes.

21 Q Do Mediavine's publisher customers use Mediavine to
22 sell ads on web browsers that are accessible by tablets?

23 A Yes.

24 Q Let's switch to publisher customer properties. Wait.
25 What type of ad formats can advertisers purchase on

Read-In - E. Hochberger

1 Mediavine's publisher customers' properties?

2 A We make the same formats available for both publisher
3 and owned-and-operated.

4 Q So, again, just so we're clear, those would be banner,
5 native, in-stream video, and outstream video ads; did I get
6 that correct?

7 A Correct.

8 Q And do Mediavine's publisher customers sell ads through
9 different ad formats at the same time?

10 A Yes. Again, we make sure our publisher inventory is
11 available in multiple format.

12 Q And why does Mediavine do that?

13 A Increased yield. If a bidder is willing to pay more
14 money for a banner ad than a video ad, we will show the
15 banner ad. The same concept with native or video. Our sole
16 goal is to increase yield. That's what I keep saying.
17 That's our job.

18 Q And to increase yield, you give the advertisers more
19 options to choose from; is that fair to say?

20 A Yes.

21 Q Would you agree that Mediavine's publisher customers
22 sell more ads to the ad format that have a better rate of
23 return?

24 A I think publisher -- yeah, I think it's -- there's a
25 variety. It's sold across all four. It's not -- yeah,

Read-In - E. Hochberger

1 whatever. At the time of auction, whatever the highest bid
2 is what we take, whatever the format.

3 Q I'd like to show you a document marked Hochberger is
4 Defendant's Exhibit 2.

5 MS. DUNN: Your Honor, move to admit 1734.

6 MS. WOOD: No objection.

7 THE COURT: All right. 1734 is in.

8 Q Mr. Hochberger, do you recognize this document?

9 A It appears to be a page from our website.

10 Q And would you agree that it is a page from Mediavine's
11 website that is entitled Ad Capabilities?

12 A Yes.

13 Q Do you recognize Defendant's Exhibit 2 or DTX 1734 to
14 be a true and accurate copy of a website from Mediavine's
15 website called ad capabilities?

16 A Yes.

17 Q And was the ads capability website reflected in
18 Defendant's Exhibit 2 maintained in the ordinary course of
19 Mediavine's business?

20 A Yes.

21 Q I'd like to direct your attention to page 2 of
22 Defendant's Exhibit 2. And on page 2, there is a second box
23 above the picture where it says, as read, We also utilize a
24 super auction which allows multiple formats to compete
25 within the same slot.

Read-In - E. Hochberger

1 Do you see that?

2 A Yes.

3 Q What does that mean?

4 A That's what I was trying to describe before, where we
5 will offer an advertiser to purchase either outstream,
6 native, or banner in the format they wish. And the one that
7 pays the most will be the one that will win the spot.

8 Q In other words, a super auction puts multiple formats
9 in competition for the same impression?

10 A Yeah, for the same ad slot.

11 Q And how would you define preferred deal transaction to
12 make sure we're on the same page?

13 A So you would generally have a PMP, as we described
14 before, which is an agreed upon, like, private marketplace.

15 A preferred deal is similar, but it has kind of a fixed
16 price associated with it. So instead of being submitted
17 into an auction, they are submitting a bid with a fixed that
18 both parties can agree upon.

19 Q And how would you define a programmatic guaranteed
20 transaction?

21 A Again, similar. The private marketplace deal is a
22 direct relationship but with preferred -- sorry, with
23 programmatic guaranteed, they are guaranteed to win a
24 certain number of impressions. So it's like a guaranteed
25 budget in exchange for a certain number of guaranteed wins.

Read-In - E. Hochberger

1 Q And I think we didn't cover this earlier, but how would
2 you define an open auction?

3 A An open auction is one in which we do have a --
4 necessarily a direct relationship with the advertiser and
5 that particular transaction. So they just purchase the
6 inventory.

7 Q So you were shown Defense Exhibit 2 deemed ad
8 capabilities. Do you have a date when this was published by
9 Mediavine?

10 A I do not, and I believe it's continuously updated as we
11 add new capabilities.

12 Q Is there anything that you can determine from looking
13 at Defense Exhibit 2 that gives you a date of this
14 particular version of it?

15 A You're testing how good my glasses are right now. Let
16 me see if I can find a date in any of those blog posts that
17 are in the screenshots.

18 No, there does not -- no, there does seem to be any
19 indication of a date that I can give you.

20 Q And then you were shown Defense Exhibit 1 which was
21 titled Ad Management Partners. Do you have that in front of
22 you?

23 A I do.

24 Q Same question of do you have a date of when this will
25 be -- this would have been published?

Read-In - E. Hochberger

1 A I mean, this is, again, another living, breathing
2 document that is continuously updated. So I don't have an
3 exact date.

4 Q The same question: Is there anything from looking at
5 Defense Exhibit 1 which would indicate to you a date?

6 A From only that, I would personally know that some of
7 these partners are added recently. So it has been updated
8 recently. But no, no dates appear to be anywhere in there.

9 Q Google's counsel asked you and kind of went one by one
10 through your SSP partners; is that right?

11 A Yes.

12 Q Which SSP does Mediavine use the most?

13 A How you would define using the most?

14 Q Well, who do you think is your largest supply-side
15 partner?

16 A Again, I think we had mentioned after Google, it would
17 be either Magnite or PubMatic depending on the month.

18 Q But Google is first; is that right?

19 A By pure revenue, yes.

20 Q If you use an alternative SSP other than Google, do you
21 still have an ad option occur?

22 A Yes. We choose to have an ad auction because, again,
23 to increase yield, we want everyone bidding.

24 Q So these SSPs that were listed, would they replace AdX
25 as a platform or a product.

1 A I would say these are -- yeah, these compete alongside
2 AdX.

3 THE COURT: All right. Good timing.

4 All right. Let's read very quickly the exhibits
5 that went in today, and then we will be finished for the
6 evening.

7 THE COURTROOM DEPUTY: DTX 2535; DTX 2071; DTX
8 2069 and 2069A; DTX 2043 and 2043A; PTX 1373; PTX 1362; PTX
9 1860; DTX 1248; DTX 486; DTX 1214; DTX 1429; DTX 733; DTX
10 1132; DTX 1053; DTX 1514; DTX 494; DTX 1186; DTX 1182; DTX
11 1490; DTX 1616; DTX 1257; DTX 1179; DTX 1544 and 1544A; DTX
12 1071, pages to be determined; DTX 1733; and DTX 1734.

13 MS. DUNN: Your Honor, I just want to make sure on
14 DTX 1788. Because we had it on our list, but it was not
15 read.

16 MS. WOOD: And I have DTX 1788 was the one that
17 started to be in and then Your Honor said, no, we're not
18 going to have that.

19 THE COURT: Which witness was that again?

20 MS. WOOD: Borgia.

21 MS. DUNN: I think it was the competitive
22 intelligence document.

23 MS. WOOD: It's on the screen.

24 THE COURT: That's not in, no.

25 MS. DUNN: Okay. Got it.

1 THE COURT: Ms. Wood, did you have any problems?

2 MS. WOOD: No.

3 THE COURT: All right. So tomorrow is Thursday.

4 You don't have to lean your desks. We will start at 9:00, I
5 assume, with your expert. Is that the next witness?

6 MS. DUNN: Yeah. So, Your Honor, our first
7 witness is actually going to be a very short Google witness
8 due to scheduling. Her name is Jessica Mok.

9 THE COURT: All right.

10 MS. DUNN: And then we will move on with expert
11 testimony.

12 THE COURT: And you have doctor?

13 MS. DUNN: Professor Israel.

14 THE COURT: Is he the only expert?

15 MS. DUNN: So we are about -- we have to go back
16 and make a final decision about whether or not to jettison
17 the remaining two experts at this point given how much
18 evidence the Court has already heard. But Professor Israel
19 will certainly testify. And then we will also tomorrow seek
20 to complete the remaining deposition designations, which I
21 haven't worked on all day.

22 THE COURT: Right.

23 MS. DUNN: We're really trying to bring this in
24 tomorrow depending, of course, on the length of plaintiffs'
25 cross-examination.

1 THE COURT: Right. And then, Ms. Wood, you're
2 going to try to give the defense as good an idea as you can
3 as to what, if any, rebuttal case the government plans.

4 MS. WOOD: Yes, Your Honor. I mean, obviously, to
5 the extent we have anywhere from one to three more experts,
6 that will be difficult for us to say tonight. But we'll
7 tell them as much as we can tell them tonight. And more
8 likely we'll have a better view tomorrow night once we've
9 heard all the evidence.

10 THE COURT: All right. You've done a good job,
11 both of you, both teams of moving this case.

12 So we're finished for this evening, and we'll
13 recess court until 9:00 tomorrow morning.

14 MS. DUNN: Thank you, Your Honor.

15 (Proceedings adjourned at 6:05 p.m.)

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I certify that the foregoing is a true and
accurate transcription of my stenographic notes.

/s/
Rhonda F. Montgomery, CCR, RPR